

REAUTHORIZING THE COMPACTS OF FREE  
ASSOCIATION WITH MICRONESIA AND THE  
MARSHALL ISLANDS

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON ASIA AND THE PACIFIC  
OF THE  
COMMITTEE ON  
INTERNATIONAL RELATIONS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED EIGHTH CONGRESS  
FIRST SESSION

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JUNE 18, 2003  
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# CONTENTS

	Page
WITNESSES	
Albert V. Short, Director, Office of Compact Negotiations, U.S. Department of State .....	10
David B. Cohen, Deputy Assistant Secretary of the Interior for Insular Affairs, U.S. Department of the Interior .....	18
Susan S. Westin, Managing Director, International Affairs and Trade, General Accounting Office .....	24
LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING	
The Honorable James A. Leach, a Representative in Congress from the State of Iowa, and Chairman, Subcommittee on Asia and the Pacific: Prepared statement .....	3
Albert V. Short: Prepared statement .....	13
David B. Cohen: Prepared statement .....	21
Susan S. Westin: Prepared statement .....	26
APPENDIX	
The Honorable Nick Smith, a Representative in Congress from the State of Michigan: Prepared statement .....	55
Letters submitted for the record by the Honorable Nick Smith .....	55
Copy of Judgment, <i>Danny P. Barrett v. State of Chuuk</i> , submitted for the record by the Honorable Nick Smith .....	58
The Honorable Madeleine Z. Bordallo, a Representative in Congress from Guam: Prepared statement .....	59
Richard Lawless, Deputy Assistant Secretary of Defense for Asian and Pacific Affairs, Office of the Assistant Secretary of Defense for International Security: Prepared statement .....	59
Questions submitted for the record to Albert V. Short by the Honorable James A. Leach, and Mr. Short's responses .....	62
Additional material submitted for the record by the Office of Compact Negotiations .....	65
Questions submitted for the record to David B. Cohen by the Honorable James A. Leach, and Mr. Cohen's responses .....	66
Questions for the record submitted to Susan S. Westin by the Honorable James A. Leach, and Ms. Westin's responses .....	67
Gerald M. Zackios, Foreign Minister, Republic of the Marshall Islands: Prepared statement submitted for the record by the Honorable Eni F. H. Faleomavaega, a Representative in Congress from American Samoa .....	69
The Honorable Peter Christian, Senator, the Federated States of Micronesia, and Chief Negotiator of the Joint Committee on Compact Economic Negotiations of the Federated States of Micronesia: Prepared statement .....	73
The Honorable Christopher J. Loeak, Senator in the Nitijela representing the Atoll of Ailinglaplap, and Chairman, Kwajalein Negotiation Commission (KNC), on behalf of Kwajalein Landowners: Prepared statement submitted for the record by the Honorable Eni F. H. Faleomavaega .....	76
The Nuclear Claims Tribunal of the Republic of the Marshall Islands .....	79



## REAUTHORIZING THE COMPACTS OF FREE ASSOCIATION WITH MICRONESIA AND THE MARSHALL ISLANDS

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WEDNESDAY, JUNE 18, 2003

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON ASIA AND THE PACIFIC,  
COMMITTEE ON INTERNATIONAL RELATIONS,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 1:38 p.m. in Room 2172, Rayburn House Office Building, Hon. James A. Leach (Chairman of the Subcommittee) presiding.

Mr. LEACH. The Committee will come to order.

On behalf of the Subcommittee I would like to welcome our distinguished witnesses. We are pleased, in particular, to welcome Mr. Albert V. Short, Director of the Office of Compact Negotiations at the Department of State; Mr. David B. Cohen, the Deputy Assistant Secretary for Insular Affairs at the Department of the Interior; and Ms. Susan B. Westin, Managing Director, International Affairs and Trade of the General Accounting Office.

I should note we are also pleased to welcome to our hearing today a number of the Armed Services Resource Committee, Representative Madeleine Bordallo who has the honor of representing the great territory of Guam, and you are, of course, most welcome.

At the outset, I would like to express my appreciation to the Administration for agreeing to the unusual format for today's hearing. Customarily the Executive Branch witnesses testify first, but because of the legislative schedule the Administration has agreed to accommodate the Subcommittee in this instance, and I thank you.

So there is no misunderstanding in terms of precedent, the Administration generally has the discretion of testifying prior to the government or private sector witnesses.

Our hearing today will focus attention on U.S. efforts to renegotiate the Compact of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands.

The United States has shared a uniquely close and mutually beneficial relationship with the peoples of Micronesia and the Marshall Islands for the past half century. For almost 40 years after World War II, the U.S. had administered both Micronesia and the Marshall Islands, along with Palau and the Northern Mariana Islands, as part of the United Nations Trust Territory of the Pacific Islands.

In the Marshall Islands, U.S. conducted atmospheric nuclear tests during the forties and fifties, and has maintained a U.S. Army base and missile test range at Kwajalein atoll since 1964.

In 1986, Micronesia and the Marshall Islands chose to become sovereign states and entered into a Compact of Free Association with the United States. The Compact was intended to ensure self-government for the new island nations, to assist them in their economic development toward self-sufficiency, and to advance certain national security objectives.

In general, U.S. foreign policy and strategic interests has been well served by the Compact of Free Association. The islands have been steadfast friends of the United States, and enjoy a special place in the hearts of the American people. It is impressive, for example, how many Marshallese and Micronesians serve in the United States Armed Forces relative to the islands' populations.

Unfortunately, the Subcommittee has been greatly concerned to discover that at least in some instances the Compact was marred by poor planning, mismanagement and certain misuse of funds, and to some degree on our part, inadequate oversight. We are therefore keenly interested to know how the new Compact purpose remedied the circumstance both with respect to the project design and implementation.

Under the current Compact, U.S. financial assistance and U.S. defense rights were set to expire in 2001, but could be continued for an initial 2 years while the nations renegotiated the expired provisions.

U.S. and the two-island nations began renegotiating these provisions in the fall of 1999, and recently finalized revised Compacts of Free Association with both the FSM and RMI.

The Administration is expected to transmit to Congress a package of authorizing legislation for these Compacts within the next week or two.

Here, I would simply underscore the Subcommittee's concern with the timing of the Administration's submission assuming we receive the draft legislation in the next few days. Congress will still be left with just a few weeks to act before the current Compact lapses at the end of the fiscal year. The short calendar leaves us with little margin for error. We intend to move expeditiously to re-authorize the Compact shortly after return from the July 4th recess.

I will leave it to the Administration to describe the new Compact in detail. Suffice it to say that these authorizations involve substantial financial commitments by the United States to the FSM and RMI through 2023.

The new Compacts anticipate an end us U.S. annual funding by capitalizing a trust fund for each country that eventually will provide an income stream after U.S. grants assistance ends.

The Subcommittee fully expects not only that the new Compact funding will be structured to ensure a more robust oversight and planning than occurred under the original Compact, but that the U.S. will also be able to fully ensure appropriate use of trust fund monies.

We appreciate your appearance today, and look forward to your testimony.

Mr. Faleomavaega.

[The prepared statement of Mr. Leach follows:]

PREPARED STATEMENT OF THE HONORABLE JAMES A. LEACH, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF IOWA, AND CHAIRMAN, SUBCOMMITTEE ON ASIA AND  
THE PACIFIC

On behalf of the Subcommittee, I would like to welcome our distinguished witnesses. We are pleased to welcome Mr. Albert V. Short, Director, Office of Compact Negotiations, U.S. Department of State, Mr. David B. Cohen, Deputy Assistant Secretary for Insular Affairs, U.S. Department of the Interior, and Ms. Susan B. Westin, Managing Director, International Affairs and Trade, General Accounting Office. I should also note that we are pleased to welcome to our hearing today a Member of the Armed Services and Resources Committees, Representative Madeleine Bordallo, who has the honor of representing the great Territory of Guam. You are most welcome.

At the outset, I would like to express my appreciation to the Administration for agreeing to the unusual format for today's hearing. Customarily Executive Branch witnesses testify first, but because of the busy legislative schedule the Administration has agreed to accommodate the Subcommittee in this instance. So there is no misunderstanding in terms of precedent, the Administration always has the discretion to insist on testifying prior to other governmental or private sector witnesses.

Our hearing today will focus attention on U.S. efforts to renegotiate "the Compacts of Free Association" with the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI).

The United States has shared a uniquely close and mutually beneficial relationship with the peoples of Micronesia and the Marshall Islands for the past half-century. For almost forty years after World War Two, the U.S. administered both Micronesia and the Marshall Islands (along with Palau and the Northern Mariana Islands) as part of the United Nations Trust Territory of the Pacific Islands. In the Marshall Islands, the U.S. conducted atmospheric nuclear tests during the 1940s and 1950s, and has maintained a U.S. Army base and missile test range at Kwajalein atoll since 1964.

In 1986, Micronesia and the Marshall Islands chose to become sovereign states and entered into a Compact of Free Association with the United States. The Compact was intended to ensure self-government for the new island nations, to assist them in their economic development toward self-sufficiency and to advance certain national security objectives.

In general, U.S. foreign policy and strategic interests have been well-served by the Compact of Free Association. The islands have been steadfast friends of the United States and enjoy a special place in the hearts of the American people. It is impressive, for example, how many Marshallese and Micronesians serve in the U.S. armed forces relative to the islands population.

Unfortunately, this Subcommittee was greatly concerned to discover that the first Compact was marred by a combination of poor planning, mismanagement, misuse of funds, and inadequate oversight. We are therefore keenly interested to know how the new Compacts propose to remedy this circumstance both with respect to project design and implementation.

Under the current Compact, U.S. financial assistance and U.S. defense rights were set to expire in 2001, but could be continued for an additional two years while the nations renegotiated the expiring provisions. The U.S. and the two island nations began renegotiating those provisions in the fall of 1999, and recently finalized revised Compacts of Free Association with both the FSM and the RMI. The Administration is expected to transmit to Congress a package of authorizing legislation for those Compacts within the next week or two.

Here I would underscore the Subcommittee's concern with the awkward timing of the Administration's legislative submission. Assuming we receive the draft legislation in the next few days, Congress will still be left with just a few weeks to act before the current Compact lapses at the end of the fiscal year. The short calendar leaves us with little margin for error. Nevertheless, we intend to move expeditiously to reauthorize the Compacts shortly after we return from the July 4 recess.

I will leave it to the Administration to describe the new Compacts in detail. Suffice to say that these authorizations involve substantial financial commitments by the United States to the FSM and RMI through 2023. The new Compacts anticipate an end to U.S. annual funding by capitalizing a trust fund for each country that eventually will provide an income stream after U.S. grant assistance ends. The Subcommittee fully expects not only that the new Compact funding will be structured to ensure more robust oversight and planning than occurred under the original Compact, but that the U.S. will also be able to fully ensure appropriate use of trust fund monies.

We appreciate your appearance today and look forward to your testimony.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman, and I want to commend you for calling this hearing this afternoon in reference to the renewal of the Compact of Free Association with the Federated States of Micronesia and also the Republic of Marshall Islands.

But before proceeding, Mr. Chairman, I would like to ask unanimous consent that the full text of the statement by the Honorable Gerald Zackios, the Foreign Minister of the Republic of the Marshall Islands, be made a part of the record.

Mr. LEACH. Without objection.

Mr. FALEOMAVAEGA. And also unanimous consent of the submission of the text of the statement by Senator Christopher Loeck who is the Chairman of the Kwajalein Negotiation Commission, and this is on behalf of the Kwajalein land owners, Mr. Chairman.

Mr. LEACH. Without objection.

Mr. FALEOMAVAEGA. Okay. Mr. Chairman, thank you, and I want to extend my personal welcome to Colonel Short who has been the chief negotiator on behalf of our Government with the principals of the Federated States of Micronesia and also the Marshalls. I also want to welcome Mr. David Cohen who is the Deputy Assistant Secretary of the Department of the Interior dealing with insular areas; and my good friend, Ms. Westin, of the General Accounting Office that we always enjoy deliberating on our differences as to how the GAO goes about providing submission of records and data to the Congress. I look forward certainly to hearing their testimony this afternoon.

Mr. Chairman, this is a very important, and not necessarily a new beginning, but certainly a renewal of our very unique relationship with these entities in Micronesia. I believe it was immediately after World War II, in 1946, that we as a nation unilaterally declared Micronesia as a strategic trust, and whether or not the United Nations like it, we just simply said we were going to take over. We are going to be the administering authority, and that is how we ended up being the administrative authority for these islands, at that time know, as the Trust Territory of the Pacific Islands.

I think I need to remind my colleagues, and especially for the record, that our friends in Micronesia, I think, have made tremendous sacrifices in the interest of our strategic and security interests in this region of the world. Sometimes we tend to forget that, Mr. Chairman, and I realize the American public 50 years after World War II tend not to remember or even want to remember what happened in those days.

And I say this, again, Mr. Chairman, with due respect for what happened to the inhabitants of the Marshall Islands. Some 66 nuclear devices were exploded on these islands in the South Pacific, or North Pacific if I may say, where we exploded the first hydrogen bomb in 1954, which was known as the Bravo Shot. It was literally over 1,000 times more powerful than the atom bombs that we dropped in Nagasaki and Hiroshima.

It gives you an idea of how expensive our nuclear testing program was at that time in the 1960s. I would like to say that the Marshall Islands really took the brunt of our nuclear testing program. Then also establishing a Kwajalein missile testing range where we fire our ICBMs from Vandenberg Air Force Base in Cali-



foria. They landed in the largest bikini in the world, and I think we have well over some \$3 billion in that missile testing facility in the Marshall Islands.

The same thing could also be said, Mr. Chairman, of our strategic interests and our relationship with the Federated States of Micronesia. I want to commend Mr. Short for conducting 7 months of intense negotiations with the official of both the FSM and the Marshalls, and I look forward to hearing the testimonies from our witnesses this afternoon. I do have some questions I want to raise with them as we proceed.

Thank you, Mr. Chairman.

Mr. LEACH. Thank you.

Mr. FALEOMAVAEGA. I also want to welcome my colleague and dear friend, the congresswoman, gentlelady from Guam, who wanted to join us in the hearing this afternoon, Ms. Bordallo.

Mr. LEACH. Mr. Rohrabacher.

Mr. ROHRABACHER. Just a few thoughts before we proceed. I appreciate not only calling this hearing, but calling our attention, Mr. Chairman, to the time table that we have to deal with. My reading of this is that on September 30th of this year, a time which is rapidly approaching, we have got to renew this Compact, and title III, in particular, which is security and defense relations, will expire on September 30th, and that is coming down on us. And I think we owe it to these people who have been with us for so long now in the Marshall Islands to make sure that we just do not take things for granted like this and wait until the last minute.

I do not think that that speaks well of the way we are handling our affairs with them, and it shows a certain—not lack of respect, but I would say a certain taking for granted that we should not be doing.

The Marshall Islands, and I was very honored to have visited the Marshall Islands a few years ago, and the Marshall Islands play—in the past have played a pivotal role in our national security, and I know that we do not reward people for what they have done in the past. I mean, there is a saying in Washington that the fastest drain liquid known to man are tears of gratitude. And the fact is we are not doing anything based on gratitude.

What we are doing is, number one, recognizing, yes, we owe a debt to the people of the Marshall Islands for everything they have done for our national security in the past, but for those of us who are involved with America's space effort and high technology development, we know that the Marshall Islands are pivotal, they are absolutely essential to the United States effort to develop a missile defense system, and we will not be secure, our country will not have the defenses it needs in the future unless we have a good relationship with the people of the Marshall Islands.

They are going to be providing us the ability to test our anti-missile system. And to put that in perspective, what is going on in North Korea right now if we had no prospects of developing an anti-missile system, it would be a horrifying prospect to think that 10 years or 20 years down the road that some nut case in North Korea could launch a missile toward the United States, and we would be able to do absolutely nothing about it.

Well, if we are going to be able to do something about it and have that type of defense, we have to be working with the people of the Marshall Islands. They have already sacrificed for us during the Cold War. Without their sacrifice we would not have developed the weapon systems that we needed to deter war with the Soviet Union until the Soviet Union had a chance to fall apart.

And so, again, we owe that gratitude, but we also look forward in saying we owe it to them and we owe it out ourselves to make sure that we pay attention to this Compact.

So as I say, when I visited there, I was very impressed with the spirit of those people. I know there has been some problems, and what we owe it to the people of the Marshall Islands, what they owe to us is for us to work together very seriously to come to an accommodation to make sure this Compact works to the benefit of the people. Neither they nor we need money disappearing or not being wisely spent, so that the agreement that we reach with the government there so that it benefits everybody on those islands and it benefits the people of the United States, and not just a few.

So they are willing to work with us. We should be willing to work with them. And we need to work out the details because it is important for our national security.

Thanks for being the point person, Mr. Chairman, on this and let us get this project moving.

Mr. LEACH. Mr. Weller? Ms. Bordallo, would you like to—

Ms. BORDALLO. Thank you, Mr. Chairman, Chairman Leach, and thank you for the courtesy of allowing me to participate in this hearing.

I would also like to commend my very good friend, the Ranking Member, Mr. Faleomavaega, for your leadership on issues affecting the Asia Pacific region.

And as I look out in the crowd, I see many of my friends from the Micronesian Islands. I would like to acknowledge Ambassador Jesse Marehalau, the Federated States of Micronesia, and Ambassador Banny deBrum, representing the Marshall Islands. And of course, our witnesses too who I am very familiar with, Mr. Al Short, negotiator; my good friend, the Deputy Secretary of the Interior, Mr. David Cohen; and Ms. Susan Westin.

Mr. Chairman, as I look out in the room here, it almost appears to be a meeting like we would have back home. We have so many of our Micronesian friends and representatives here.

Mr. Chairman, I strongly support the renewal of the Compact agreements and the continued economic assistance to the Compact states. Guam is the closest neighbor to the Federated States of Micronesia, and the Republic of Palau, and we have seen the progress that the Freely Associated States have made under their respective Compact agreements.

As we review the record of accomplishments under the 15-year agreement, we should also weigh the issues and the concerns that have been raised regarding economic and social development.

One of the major concerns, Mr. Chairman, for Guam is the reimbursement of costs incurred by Guam due to the Compact. I understand that the agreements that have been negotiated by the State Department may address some of the issues regarding passport re-

quirements for FAS citizens, but the unrestricted migration provisions may be unchanged.

The Government of Guam has incurred significant costs over the past 17 years due to this migration, and we have been inadequately reimbursed by the Federal Government. The immigration policies should go hand in hand with an adequate reimbursement policy for Compact-impact costs. And I have other concerns regarding the changes that the Administration may propose, and I would seek clarification on how these changes would improve the economic viability of the Freely Associated States.

I am concerned about proposed changes to participation in disaster relief programs under the Stafford Act, and on changes to participation in other federal grant programs. Will these changes contribute to the future well being of the Compact states or are these changes driven by budgetary constraints? Is there an overall policy which defines which Federal programs are appropriate for the Compact states, or is this an issue that is defined on a program by program basis?

As the congressional review process goes forward, Mr. Chairman, I hope that these concerns would be addressed.

And finally, I am interested in how Compact assistance will be administered and whether new measures intended to increase accountability will work. Guam's experience with the Compact-impact issue is a warning that we have to be on guard against the law of unintended consequences because it may be very difficult to foresee how policies made in Washington work in the islands.

If experience is the guide, then Guam's experience has been that Compact issues are nearly impossible to revisit if we do not get this right the first time.

Thank you very much, Mr. Chairman.

Mr. LEACH. Thank you, ma'am.

Ms. Watson, did you want to make any opening comments?

Ms. WATSON. Thank you so much, Mr. Chairman, and I want to apologize for my tardiness, but we were in other caucuses, or should I call them cauci.

Thank you for the opportunity to give a statement about the U.S. relationship with the Freely Associated States. President Clinton gave me the privilege to represent the American people as the Ambassador to the Federated States of Micronesia in the last nineties. It is from this intimate perspective that I would like to make a few brief comments.

Six hundred and seven islands in one million square miles of ocean define the Federated States of Micronesia, and a group of atolls. When squeezed together, that would be roughly the size of Washington, DC, and they all comprise the RMI.

Significance of the region to American World War II history was embedded in institutional memory back in 1986. Our congressional leaders, many of them World War II veterans, strove to develop the United States relationship with this area of the Pacific. Another important goal was to recognize the unified islands as sovereign nations.

The location of these two countries in the Pacific Ocean is of strategic importance to the United States. therefore, the first Compact of Free Association.

Over the last 17 years, the relationship between the FSM, the RMI, and the United States has experienced growing pains, but the overall result has been positive.

As we reauthorize the Compact of Free Association in 2003, we must regain the perspective of the waning institutional memory.

Secondly, we should be a good teacher and a friend with financial accountability.

Third, we have to assist in the education of the island's greatest commodity, its human capital.

The institutional memory that I speak of pertains to the intent of the United States Government. The larger, what is our current foreign policy, is a big debate for another time. On the other hand, this question must be answered for a successful Compact.

I urge my colleagues to include language in the finding section of the Compact legislation stating the intent of the United States with respect to the FAS.

Financial accountability is the issue that bureaucrats look at for justification to cut or curtail support for the FAS. Many of the official discussions that I have had with the FSM government was centered on this subject. The lessons learned over the past Compact do not warrant any financial punishment. The United States learned as much about this unique Compact arrangement as the FSM and the RMI learned about establishing their respective democratic governments.

I understand that the U.S. proposals sufficiently address GAO's past recommendations regarding increased accountability. Negotiating this Compact has naturally absorbed a lot of time and a lot of persuasive skills. These selling skills now must be applied to building businesses, not negotiating the accountability systems.

Intellectual capital is the greatest asset the FAS has to create a self-sustaining economy. From now on the most talented people in the FAS should be working in the economy. Our new accountability system should be clear and uncomplicated, not designed to require too much of the government's time and talent.

Micronesia cannot earn export income from low-cost labor projects. With 20 years' financing secured, there is enough time to build industries based on design and intellectual property, modern businesses that are carefully developed to find and use opportunities in the booming Asian economy. The business environment must be upgraded so that the best talent can leave government and pursue opportunities for growth.

Although in another Committee, I am deeply concerned by a message sent by this Congress to the FAS. The recent elimination of the IDEA and Head Start assistance, coupled with threatened Pell Grant eligibility next year, could cripple the ability to cultivate education, and that indeed will slow the progress of the FAS.

In conclusion, I am pleased with the overall progress of the new Compact of Free Association. With a few minor tweaks, we can produce a product that all three governments and the people that they serve can be proud of.

And I want to urge my colleagues to heed the September deadline of the existing Compact. A lapse into an annual appropriations would not be beneficial for either party.

And I also urge my colleagues to gain institutional memory and study the importance of our relationship with the FAS. This unique relationship is entrusted to this Committee, the International Relations Committee, and it is an opportunity to make a significant foreign policy decision that will affect America and the FAS for years to come.

I want to thank the negotiators on both side. I want to thank the supporters of the FAS. I want to thank particularly those from Micronesia for coming to my office, coming to our offices, and keeping us abreast. And I want to thank your dedication and commitment. I think together we can march into a very positive and beneficial future for the FAS and the United States of America.

Mr. Chairman, I yield the balance of my time, and thank you very much.

Mr. LEACH. Well, thank you, Ambassador Watson.

I would like to proceed, but I want to first ask if Chairman Burton has any comments he wants to make.

Mr. BURTON. No, Mr. Chairman. I am here to listen and learn, which is rare for me, right? [Laughter.]

Mr. LEACH. But I understand Mr. Smith has an important comment he wants to make. Mr. Smith.

Mr. SMITH OF MICHIGAN. Mr. Chairman, thank you very much, and this is a concern from one of my constituents of not receiving money that he feels is owed to him by the Island of Chuuk, the State of Chuuk. And I appreciate and I will try to be brief.

But the issue as related to me by my constituent, Mr. Danny Barrett, is that he obtained a judgment from the supreme court of the Federated States of Micronesia in the amount of \$16,000 for contract benefits owed him by the State of Chuuk.

Do I pronounce that correctly? Chuuk. I am sorry.

This judgment was issued in 1993, but the state has still refused to pay. I have a letter here that I hope somehow we can address, from the Acting Officer of Insular Affairs of the Department of Interior to the Governor of the State of Chuuk, urging payment is directed by the supreme court finding. The issue has not been resolved. Sixteen thousand dollars to some is not a lot of money, but for my constituent it is a lot of money, and it seems like if these payments are not being made after you have a FSM court order, then it discourages American investment.

I note that it raises some fundamental questions about the prospects for economic investment in the future, and furthermore, the continued refusal of the State of Chuuk or any state to pay judgments reached in legitimate federal and state FSM courts raises serious questions about the rule of law.

And I would note that even our appropriators in 2002 indicated this problem in their appropriation bill. It says,

“The Committee is aware that for numerous years Chuuk State of the Federal States of Micronesia has been seriously delinquent in satisfying various judgment debts.”

And so if it is a problem, somehow maybe we could deal with it. As my constituent suggests, maybe a Compact amendment needs to be made by the Congress that provides that any American citizen who submits to the Office of Insular Affairs of the Department

of Interior an attested copy that the debt is owed can receive help. Maybe there can be some kind of provisions for withholding or assurance that some of these debts be paid, somehow to determine the legitimacy of the debt, and then deal with it. It seems to me that it has some advantages for long-range investments from American or other countries.

And with that, Mr. Chairman, could the Committee consider including in the record some of these, and we will furnish them to the witnesses? Or if they have any comments now of the problem, maybe they could relate to it.

Mr. LEACH. Well, if the gentleman would withhold, I would rather have the panel give their presentations and then the gentleman could ask questions.

Mr. SMITH OF MICHIGAN. Okay, thank you.

Mr. LEACH. Without objection, if he has a judgment that he thinks would be appropriate to put in the hearing record, it will be placed in it.

Mr. SMITH OF MICHIGAN. The letter from my constituent.

Mr. LEACH. Yes.

Mr. SMITH OF MICHIGAN. Thank you, Mr. Chairman.

Mr. LEACH. Without objection.

At this point I would like to turn to Mr. Short, and let me also thank Mr. Short and assert that you have the full confidence of the Committee in your professional negotiations on this issue, and we are appreciative of your efforts.

Mr. Short.

Excuse me. If I could ask that you pull the microphone quite close.

#### **STATEMENT OF ALBERT V. SHORT, DIRECTOR, OFFICE OF COMPACT NEGOTIATIONS, U.S. DEPARTMENT OF STATE**

Mr. SHORT. Mr. Chairman, Members of the Committee.

Thank you for this opportunity to testify on the Compact of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands. I note that I appeared before this Subcommittee last year and updated you on the status of the negotiations.

The Compact Act, including the RMI and FSM signed Compacts is approved by the Administration and being transmitted to the Congress.

The original Compact: The Compact of Free Association with the FSM and RMI established a political relationship that is open ended. The original 15-year Compact funding authorization for the FSM and the RMI, however, ended in fiscal 2001 with a 2-year extension, as you have noted.

The original Compact successfully met its main goal of providing for a stable transition from United Nations trusteeship to sovereign self-government for the FSM and the Marshall Islands, at the same time the Compact protected U.S. security, maritime and commercial interest in the Pacific by our assumption of defense responsibilities for this vast sea and air space, including Palau, and by ensuring access to important Department of Defense sites at Kwajalein Atoll and the Marshall Islands.

The original Compact was successful in transforming the relationship between these islands and the United States to one of our closest bilateral relationships; and for example, we now number the FSM and RMI among our staunchest friends in the United Nations.

The current Compact assistance: The U.S. currently provides assistance in three ways—financial assistance under the Compact, that is title II of the Compact; Federal programs and services under the Compact; and also Federal programs that are apart from the Compact.

The U.S. provides about \$160 million annually in financial assistance to the FSM and the RMI, 80 percent from the Compact, and 20 percent from other Federal agencies, such as the Department of Education, Health and Human Services, Labor, Agriculture, and others.

The past 17 years have witnessed reoccurring problems stemming from the lack of accountability and sometimes ineffective use of U.S. economic assistance. Therefore, our principal task in the negotiations has been to improve the effectiveness of accountability of this U.S. assistance.

The reasons to continue Compact assistance: The United States has strong interests in these countries that justify continued assistance, including:

First of all, advancing economic self-reliance. In this regard, the United States will continue its commitment to the economic strategies that the RMI and FSM have developed, including consultations with the Asian Development Bank, the International Monetary Fund, and especially our partners in the ADB Consultive Group, including Japan and Australia.

Second, improving health, education and social conditions of the people in the RMI and the FS.

Thirdly, sustaining the political stability and close ties which we have developed with these two emerging democracies.

Last objective, assuring that our strategic interests continue to be secured, including access to our important defense facilities at Kwajalein Atoll.

The economic assistance: The Administration recognizes that too sharp a reduction in U.S. assistance at this stage of economic development in the RMI and the FSM could result in economic instability and other disruptions, and could encourage an increase in the level of migration under the Compact to the United States.

We continue to believe that providing substantial financial and other assistance will help to assure economic stability while the RMI and FSM continue to develop.

The Compact, as amended, will continue economic assistance from fiscal year 2004 through fiscal year 2023; that is, 20 years of grant funding.

Furthermore, the economic package includes annual contributions to a trust fund that will provide an ongoing source of revenue to be used for the same purposes as the previous grants after they expire in 2023.

Federal service and program assistance also continues unless otherwise provided by the Congress.

Compact funding will ensure economic and social stability in a smooth transition to annual payments from the trust fund in 2024.

These amounts are partially adjusted for inflation at two-thirds of the implicit price deflator, which is the same factor that was applied in the original Compact.

The U.S. contributions to the trust fund are conditioned on the FSM and RMI each contributing at least \$30 million to the trust fund. Misuse of Compact resources can lead to withholding of funds, and the FSM and RMI have agreed to cooperate with the United States on criminal investigations regarding misuse of funds, if necessary.

The fiscal year 2004 Administration budget includes the funding, \$165.4 million, for the first year of the amended Compact, but we also need the authorization for these funds, which is the Compact Act, and that has to be enacted by 1 October 2003, as was indicated.

The Administration is putting in place an effective accountability mechanism with respect to future U.S. economic assistance, the details of which will be addressed by Mr. Cohen from the Department of the Interior.

As part of the amended Compact, the United States and the Marshall Islands agreed to a long-term extension of the Military Use and Operating Rights Agreement, or MUORA, for the Ronald Reagan Ballistic Missile Defense Test Site at Kwajalein Atoll.

And let me note that we have reached agreement with the RMI on the extension that will provide for use to 2066, with an option for an additional 20 years, but with provisions whereby the U.S. could opt for early termination.

Mr. Lawless, from the Department of Defense, has submitted written testimony on our use of Kwajalein and the security and defense aspects of the amended compact.

Immigration: Based on our experience since the Compact entered into effect, as well as in the wake of the September 11th attacks, we have reexamined the immigration provisions of the existing Compact. These provisions provide that citizens of the RMI and FSM may enter into the United States, lawfully engage in occupations, and establish residency as non-immigrants in the United States.

The amended Compact will, first, require FAS citizens to have machine-readable passports; second, institute child adoption visa procedures; third, implement visa entry procedures for naturalized FAS citizens. It will preclude passport sales and other similar programs. It will make explicit the inherent U.S. authority to regulate terms and conditions for FSM and RMI citizens' admission and stay in the United States. Lastly, it removes the annual requirement to obtain an employment authorization document, or EAD, and substitute some multi-year authorization.

Impact: The subject of impact, that is, the impact of migration of Micronesian movement on Guam, the Northern Mariana Islands and Hawaii, will be addressed by Mr. Cohen.

Palau: The Compact of Free Association between the United States and Palau is not up for review at this time. We believe, however, that it makes sense for us to bring the immigration and trade



provisions of the Palau Compact into line with those agreed with the RMI and the FSM.

In addition, Palau has sought to modify some communications provisions to allow it to participate in the National Exchange Carriers Association.

These negotiations are underway by another office within the Department of State on these issues. If we reach agreement, the Administration will submit these amendments to the Congress, but action is not linked to consideration of the FSM and RMI Compacts.

In conclusion, Mr. Chairman, thank you for this opportunity to present the Administration's views on the Compacts we have signed with the FSM and the Marshalls, and let me assure you that we welcome any and every opportunity to keep the Committee informed as your deliberations proceed on the Compacts.

Thank you.

[The prepared statement of Mr. Short follows:]

PREPARED STATEMENT OF ALBERT V. SHORT, DIRECTOR, OFFICE OF COMPACT  
NEGOTIATIONS, U.S. DEPARTMENT OF STATE

Mr. Chairmen and Members of the Committees,

Thank you for this opportunity to testify on the status of the amended Compacts of Free Association with the Federated States of Micronesia (FSM) and with the Republic of the Marshall Islands (RMI).

THE ORIGINAL COMPACT

The original 15 years of Compact funding authorization for the FSM and RMI ended in Fiscal Year 2001. The Compact provisions provided an extension for up to two years through September 30, 2003, as long as Compact negotiations progressed. The original Compact successfully met its main goal of providing for a stable transition from United Nations Trusteeship to sovereign self-government for the FSM and RMI. At the same time, the Compact protected U.S. security, maritime, and commercial interests in the Pacific by assuming defense responsibilities for the vast sea and air space of the Freely Associated States (FAS) including Palau—and by ensuring access to important defense sites operated by the Department of Defense on Kwajalein Atoll in the Marshall Islands.

The original Compact was also successful in transforming the relationship between these islands and the United States into one of our closest bilateral relationships. We now number the FSM and RMI among our staunchest friends in the United Nations. These achievements are solid and lasting, and the American and FAS peoples can be justly proud of them.

CURRENT COMPACT ASSISTANCE

The U.S. currently provides assistance to the FSM and RMI in three ways: through financial assistance under the Compact; through programs and services that are included in the Compact, such as the services and related programs of the U.S. Weather Service, the Postal Service, and the Federal Aviation Administration; and through programs apart from the Compact that are funded, as Congress sees fit, by other federal agencies. The U.S. currently provides about \$160 million annually in financial assistance to the FSM and RMI, 80 percent from the Compact and 20 percent from other federal agencies outside of the Compact, such as the Departments of Education, Health and Human Services, Labor, and Agriculture.

The past seventeen years have witnessed recurring problems stemming from the lack of accountability and the sometimes ineffective use of Compact Funds. Therefore, a principal task of the recently signed agreements to amend the Compact is to improve the effectiveness and accountability of these funds. Moreover, we have agreed to put an increasing percentage of the annual U.S. Compact assistance into a trust fund that will provide an ongoing source of revenue to the two countries when annual payments by the United States end in 2023.

## REASONS TO CONTINUE COMPACT ASSISTANCE

The United States has strong interests in these countries that justify continued economic assistance under the Compact through FY 2023 and the contributions to the trust fund, provided this assistance is structured and managed as proposed. These interests include:

- Advancing economic self-reliance. (In this regard, the United States will continue its commitment to the economic strategies that the RMI and FSM have developed with the support of the United States, the Asian Development Bank (ADB), the International Monetary Fund, and our partners in the ADB Consultative Group, including Japan and Australia);
- Improving the health, education, and social conditions of the people of the RMI and FSM;
- Sustaining the political stability and close ties which we have developed with these two emerging democracies;
- Ensuring that our strategic interests continue to be secured, including access to our important defense sites on the Kwajalein Atoll;
- Putting in place and contributing to a trust fund that will provide an ongoing source of revenue when annual payments by the United States end in 2023;
- Strengthening immigration provisions in the wake of the September 11th attacks and addressing various problems that have arisen since the Compact was first approved by the U.S. Congress; and
- Mitigating the impact of immigration under the Compact on Hawaii, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

## ECONOMIC ASSISTANCE

The Administration recognizes that too sharp a reduction in U.S. assistance at this stage of economic development of the RMI and the FSM could result in economic instability and other disruptions, and could encourage an increase in the level of immigration under the Compact to the United States by citizens of those countries. We continue to believe that providing substantial financial and other assistance under the Compact will help to ensure economic stability while the RMI and FSM continue to implement economic development and reform strategies.

The Compact, as amended, provides for continued economic assistance from Fiscal Year 2004 through Fiscal Year 2023. Furthermore, the economic package provides for annual contributions to a trust fund that will provide an ongoing source of revenue, to be used for the same purposes as the previous grant assistance when the annual grant assistance ends in Fiscal Year 2023. Federal services and program assistance also continues, if provided by Congress.

## COMPACT FUNDING

Compact funding will ensure economic and social stability and a smooth transition to Fiscal Year 2024 when annual payments from the U.S. will have terminated and the trust fund becomes a source of revenue.

- The FSM will receive \$76.7 million in sectoral grants and \$16 million for its trust fund annually beginning in Fiscal Year 2004.
- Beginning in Fiscal Year 2007, the FSM sector grants decrease by \$800,000 per year through Fiscal Year 2023, with this decrease added to the trust fund.
- The RMI will receive \$30.5 million in sectoral grants, \$5.2 million for Kwajalein impact, and \$7 million for its trust fund annually beginning in Fiscal Year 2004.
- Beginning in Fiscal Year 2005, the RMI sectoral grants decrease by \$500,000 per year through Fiscal Year 2023, with this decrement added to the trust fund.
- These amounts are partially adjusted for inflation: two-thirds of the implicit price deflator will be applied as in the original Compact period.
- Under the Compact, as amended, the U.S. contributions to the trust funds are conditioned on the FSM contributing at least \$30 million to the FSM trust fund prior to September 30, 2004 and the RMI contributing at least \$25 million to the RMI trust fund on the effective date of the Trust Fund Agreement or October 1, 2003, whichever is later, and \$2.5 million prior to October 1, 2004 and another \$2.5 million prior to October 1, 2005.

- Under the Compact, grant assistance will be used for six sectors, with priorities in the education and health sectors and tied to specific outcomes and purposes and monitored by the Department of the Interior.
- Misuse of Compact funds can lead to withholding of funds until the problem is resolved. The FSM and the RMI have agreed to cooperate with the United States on criminal investigations regarding misuse of funds, if necessary.

The Administration is putting in place an effective accountability mechanism with respect to future U.S. economic assistance to the FSM and the RMI under the Compact. Economic assistance will no longer be made available through transfers that co-mingle U.S. funds with local funds, thereby rendering it difficult to track and monitor their use. Instead, future funds under the Compact will be provided through targeted, sectoral assistance, each with a clearly defined scope and objectives.

In the amended Compacts, the FSM, RMI, and U.S. have agreed that any future grant assistance will be used in six sectors:

- health,
- education,
- infrastructure,
- private sector development,
- public sector capacity building, and
- the environment.

Built into each sectoral grant will be regular planning, monitoring, and reporting requirements. The amended Compacts also provide the necessary authority and resources to ensure effective oversight and reasonable progress toward the agreed objectives.

#### TRUST FUND

A major element of the new Compact provisions is the termination of annual mandatory payments to the FSM and the RMI at the end of Fiscal Year 2023—and the establishment of a trust fund to provide an ongoing source of revenue starting in Fiscal Year 2024. In its earlier proposals to the U.S., both the FSM and RMI anticipated the U.S. interest in the termination of mandatory annual financial assistance by proposing that the U.S. capitalize a trust fund over the next term of Compact assistance. Under the amended Compact, the Administration has agreed that annual U.S. financial assistance will terminate at the end of Fiscal Year 2024, and thereafter the trust fund will provide an ongoing source of revenue. Congress has previously authorized and funded the use of similar trust funds, including one established under the Compact with the Republic of Palau, and several established in the Marshall Islands as compensation for the U.S. nuclear weapons testing program.

#### FEDERAL SERVICES AND PROGRAM ASSISTANCE

With a few notable exceptions, Federal program coordination and oversight of Compact Funds has been ineffective. We are committed to putting in place a more effective system of coordinating and monitoring that assistance during the amended Compact period.

#### KWAJALEIN MUORA EXTENSION

As part of the amended Compact, the United States and the Republic of the Marshall Islands have agreed to a long-term extension of the Military Use and Operating Rights Agreement (MUORA) for the Ronald Reagan Ballistic Missile Defense Test Site on Kwajalein Atoll. The Reagan Test Site (RTS) serves a key role in research, development, test and evaluation for the Administration's high-priority missile defense and space programs.

Although the current Military Use and Operating Rights Agreement covering U.S. use of these defense sites runs through 2016, in November 2001, RMI President Note reaffirmed the RMI's willingness to consider a long-term extension of U.S. use of Kwajalein Atoll for our defense needs. Subsequently, the RMI Government proposed that the ongoing negotiations to amend the Compact of Free Association provided a convenient forum to consider amendments extending the Military Use and Operating Rights Agreement. Following consultations with the Department of Defense, the Administration decided to pursue such an extension, if agreement could be concluded on acceptable terms, and negotiations on this issue would not delay our efforts to obtain agreement on amendments to the Compact.

Sections 211 and 212 of Title Two of the Compact, as amended, and the MUORA, as amended, provide for the following:

- The parties agree to extend the MUORA for a period of fifty years from 2016 (the current expiration date) to 2066, with a U.S. option to extend it for an additional twenty years to Fiscal Year 2086.
- To achieve the flexibility necessary to permit the long-term extension of the agreement, the two sides agreed to a schedule of early termination payments if the United States chooses to leave Kwajalein before the end of the agreement. This outcome could be exercised anytime after 2023, on advance notice of at least seven years.
- As Compensation:
  - These agreements establish a new series of Kwajalein payments beginning in Fiscal Year 2004 (October 1, 2003) at a level of \$15 million per year (increased from the current \$11.3 million) with a further increase to a new base of \$18 million in 2014. The United States Government is obligated in any case to make payments through Fiscal Year 2023, and thereafter, depending on whether it chooses to continue its use of Kwajalein Atoll. The RMI has assured us that it will endeavor to ensure that payments to landowners are distributed more equitably than they have been in the past in a manner consistent with Marshallese custom and tradition.
  - The U.S. will continue paying the \$1.9 million per year in Kwajalein impact money established in the current agreement. However, beginning in Fiscal Year 2004, this payment, which has not previously been adjusted for inflation, will be subject to the provisions of the new Compact Fiscal Procedures Agreement, will be indexed for inflation based on the formula established in the amended Compact, and emphasis will be on addressing the special needs of the Kwajalein landowners most affected by the United States presence on Kwajalein.
- Pursuant to the Compact, U.S. Army Kwajalein Atoll (USAKA) has developed, in cooperation with the RMI Environmental Protection Authority, a strong set of environmental standards and a formal process to review these standards annually and report to both governments. To promote a greater RMI capability for independent analysis of the Survey's findings and conclusions, the U.S. will provide an annual grant of \$200,000 to support increased participation of the GRMI EPA in the Survey.

For some years now, overcrowding on the Kwajalein island of Ebeye, where most of the Marshallese work force supporting the defense sites lives, has created an unmet series of special infrastructure needs for the Marshallese Communities on Ebeye and some other islands of the Kwajalein Atoll. This agreement will address these needs in the following way:

- First, the U.S. and the RMI have agreed that \$3.1 million per year of the RMI grant funding will go towards meeting the special infrastructure and development needs of the Marshallese communities on Kwajalein Atoll. In 2014, this funding will increase to \$5.1 million per year. These funds are indexed according to the Compact Title Two formula.
- Second, considering the \$1.9 million impact funding mentioned above, which is specified by the Compact to offset the impact of U.S. defense activities on Kwajalein Atoll, together with the Ebeye special needs funding, \$5 million per year (increasing to \$7 million in 2014), all of which will be focused on improving the quality of life of the Marshallese communities on Kwajalein, starting October 1, 2004.

In sum, the Administration feels that extending the MUORA, in concert with the provisions of the amended Compact, will promote the economic stability and opportunity of the RMI for the indefinite future.

#### IMMIGRATION

Based on our mixed experience since the Compact took effect, as well as in the wake of the September 11th attack, we have reexamined the immigration provisions of the existing Compact. Section 141(a) provides that citizens of the RMI and FSM “may enter into, lawfully engage in occupations, and establish residence as a non-immigrant in the United States” without regard to certain grounds of inadmissibility under the Immigration and Nationality Act (INA). Our examination and the

subsequent negotiations concluded that the immigration provisions should be amended to:

- Require FAS citizens seeking admission under the Compact to use passports.
- Clarify that immigrant visa procedures, rather than Compact nonimmigrant admission, are necessary and appropriate for child adoption cases.
- Limit Compact entry privileges of naturalized FAS citizens to a greater degree.
- Preclude use of passport sales and similar programs from serving as a means for persons from countries other than the FSM and the RMI to obtain visa-free admission privileges under the Compact.
- Make more explicit the authority of the Government of the United States to regulate the terms and conditions of FSM or RMI citizens' admission and stay in the United States, including its territories and possessions.
- Make explicit that the INA applies in full to persons seeking admission to, or the right to remain in, the United States pursuant to the Compact.
- Provide Compact admission privileges to the immediate relatives of FAS citizens in U.S. military service, whether or not the relatives are FAS citizens.
- Streamline the documentation that FAS citizens may use as evidence of work authorization in the United States.

Under the Compact, as amended, the United States will now require passports for FSM and RMI citizens seeking admission as nonimmigrants to the United States. Further, naturalized citizens of the FSM and RMI will, with certain limited exceptions, now be ineligible for visa-free admission to the United States. In addition, the Compact, as amended, provides other safeguards to prevent the admission under the Compact of persons from other countries who might seek to exploit the visa-free immigration privileges intended for the citizen population of the FAS. It addresses explicitly the problem of passport sales and other naturalization schemes designed to provide visa-free admission privileges to persons from countries other than the FSM and the RMI under the Compact. The Compact, as amended, also provides express safeguards for FSM and RMI children who are coming to the United States permanently pursuant to an adoption, or for the purpose of adoption, by requiring that those children possess an immigrant visa. This clarifies the existing U.S. interpretation of the Compact, and brings the provisions relating to the Freely Associated States into harmony with that pertaining to children from other countries concerning child adoptions and protections available to adopted children.

#### IMPACT

Section 104(e)(2) of the existing and amended Compact statutes requires the President to report annually to Congress on the impact of the Compact. A recent GAO study documents the substantial impact of FAS migration to the State of Hawaii, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI). The amended Compact and other proposed amendments to the Compact Act address the migratory impact issue in three ways:

- First, we will provide \$15 million per year of direct compensation to Hawaii, Guam, American Samoa, and the CNMI for the negative impacts of migration.
- Second, the amended Compacts strengthen immigration provisions to improve our ability to regulate RMI and FSM migrants who are eligible for admission.
- Third, the amended Compacts focus on areas such as improving the health and education of, and private sector jobs for, potential migrants, thereby reducing the impact of migration under the Compact.

The annual impact funding of \$15 million will be:

- a mandatory appropriation for twenty years.
- allocated based on a pro rata formula reflecting a periodic census of Micronesians living in Hawaii, Guam, American Samoa, and the CNMI.

#### PALAU

The Compact of Free Association between the United States and Palau is not up for review at this time. We believe, however, that it makes sense for us to bring the immigration and trade provisions of the Palau Compact into line with those agreed with the RMI and FSM. In addition, Palau has sought a change to the communications provision to make its telecommunications carrier eligible to participate

in the National Exchange Carriers Association and the Universal Services Support Fund. Negotiations are underway on these issues. If we reach agreement, the Administration will submit these amendments to the Congress.

#### CONCLUSION

Thank you for this opportunity to present the Administration's views on the Compact Act, including the Compacts we signed with the FSM and RMI. Let me assure you that we welcome any and every opportunity to keep the Committee informed as your deliberations proceed on the Compact Act.

Mr. LEACH. Well, thank you, Mr. Short, and let me just briefly say, without objection, the statement of the DoD witness will be placed in the record, that is a written statement.

Secondly, let me just stress how much we support your efforts and appreciate your careful briefings to the Subcommittee on an informal basis.

With that, let me turn to Mr. Cohen, and welcome you, sir.

#### **STATEMENT OF DAVID B. COHEN, DEPUTY ASSISTANT SECRETARY OF THE INTERIOR FOR INSULAR AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR**

Mr. COHEN. Thank you.

Mr. LEACH. And also without objection, all three statements, if they are fuller than otherwise presented, will be placed in the record.

Mr. Cohen.

Mr. COHEN. Thank you. Mr. Chairman and Members of the Committee, it is with pleasure that I appear before you today to discuss the Administration's proposed legislation to approve amendments to the Compact of Free Association with the Republic of the Marshall Islands and the Federated States of Micronesia.

I will focus on the fiscal and economic provisions of the Compacts and the subsidiary agreements. In particular, I will discuss how the proposed amendments address the concerns that the GAO and Interior, among others, have raised regarding accountability for Compact funds.

Over the 17-year life of the Compact, the U.S. will have paid a total of \$1.04 billion in direct financial assistance to the RMI and \$1.54 billion to the FSM. There have been few restrictions on this aid.

The GAO has issued a number of reports that have raised concerns about the effectiveness of Federal assistance that has been provided under the Compact. We at Interior have had similar concerns for quite some time. Our desire for better accountability has been frustrated by the fact that the current Compact provides for large, loosely defined grants with no express enforcement mechanisms to ensure the effective expenditure of funds.

I am pleased that the U.S., the RMI and the FSM have sought to address the concerns raised by the GAO, Interior, our FAS partners, and others. We have designed a completely new system to ensure that Compact funds are used productively.

First, we will target our funding. Compact funds will be available for the following six high priority sectors only: Health, education, public infrastructure, environmental protection, private sector development, and public sector capacity building.

Second, the U.S. and its FAS partners will work together to ensure that the objectives of the Compact are being properly pursued. FAS Compact budget proposals will be approved by bilateral joint committees; a U.S.-RMI committee and a U.S.-FSM committee. Each committee will include three members from the U.S. and two from the applicable freely associated state.

Third, we will require planning to ensure that Compact budgets further long-term goals and objectives.

Fourth, we will give oversight personnel at Interior the tools to protect against waste, fraud and abuse. The sector grants will be subject to terms and conditions similar to those applicable to Federal grants provided to state and local governments in the U.S., including appropriate remedies for the misuse of funds or other breaches.

Fifth, we will apply performance standards and measures to each Compact grant.

Sixth, we will provide for strong minimum standards for each FAS's financial management systems, and we will help them to meet these standards with technical assistance provided by my office and with public sector capacity development grants.

Seventh, we will provide for detailed reporting so the U.S. and its FAS partners can track progress and identify areas of concern.

Finally, we are assembling a Compact oversight team based in the Pacific. We are hiring eight additional full-time employees who will focus exclusively on monitoring and oversight of Compact grants and other Federal program assistance to the Freely Associated States.

I would also like to address the impact that migration from the RMI, FSM and Palau has had on Hawaii, Guam and our other Pacific jurisdiction as was raised by Congresswoman Bordallo.

Migrants have made important contributions to Hawaii, Guam and the territories, but have placed additional burdens on local government services. The Administration is requesting \$15 million in annual mandatory funding as a contribution to these U.S. jurisdictions to mitigate the impact of migration.

The first line of defense against this impact is the financial assistance that we will provide to the FAS under this Compact. The Compact is designed to address the problems that, according to a GAO report, drive people to migrate: Inadequate health care, education, and economic opportunity.

We do not pretend that the amended Compact will bring migration to a halt, but we sincerely hope that the people of the FAS, including those who choose to migrate, will, as a result of our new targeted assistance program, be healthier and better educated, and hence more likely to be net contributors to whatever community in which they choose to live.

I offer a few observations.

My first point is that when we talk about accountability, we are not talking about making sovereign states accountable to the U.S. Accountability refers to the collective accountability that all three governments share both to the people of the islands and to the American taxpayer. All three governments have a collective responsibility to ensure that the American taxpayers' money will not be wasted, and just as importantly, a collective responsibility to en-

sure that we deliver on our promise to help the people of the islands to improve their quality of life.

All three governments want to ensure that the people of the RMI and the FSM receive the full benefit of Compact aid. We can only achieve this with a strong accountability program. The U.S. cannot do it alone. We could not place sufficient personnel on the ground to properly do this job by ourselves without interfering with the sovereign government operations of our FAS partners, conjuring unfortunate images of a return to the old trust territory days.

The FAS cannot do it alone. They are still developing the capacity to fully protect against the possibility of waste, fraud and abuse, and to properly measure the effectiveness of Compact-funded activities.

We all recognize that we need to work together to achieve the objectives that we all share.

Some might interpret our new accountability program as an admission that the original Compact has been a failure. Nothing could be further from the truth. The Compact has been a tremendous success. America's former trust territory wards have emerged as free, vibrant, sovereign democracies. The U.S. has achieved a strategic objective of denying other powers control over vast areas of the Pacific. The Freely Associated States have benefitted from the U.S. defense umbrella, and their people enjoy the right to live, work and study here.

These nations have become America's most loyal allies in the world. Cynics say that this loyalty has been purchased with Compact aid, but no amount of money could buy the type of loyalty that lead so many of these islands finest sons and daughter to serve proudly and honorably in the U.S. military, risking their lives to protect the freedom of all Americans.

Mr. Chairman, as we sit here today U.S. Army Specialist Elerio Bermanis II lies in critical condition in Walter Reed Army Medical Center. Specialist Bermanis lost both legs and an arm, and again is in critical condition, serving in Baghdad. He hales from Kono Pei. We all pray for his recovery, and we are so grateful for his service to our country as we are grateful for the service to our country for so many of the soldiers who hale from the RMI and the FSM.

Mr. Chairman, there is clearly a heartfelt bond between Americans and the people of these islands, and the Compact has only made it stronger. We Americans value this bond.

As for criticism of the original Compact, it is important to remember that that document invented a comprehensive new kind of international relationship that was completely untested at the time. It should surprise no one and shame no one that with the wisdom of 17 years of experience the parties can think of ways to improve the Compact.

The financial assistance and accountability provisions of the original Compact provide some opportunities for improvement. The U.S. and the Freely Associated States are committed to embracing those opportunities, working together as partners to ensure that the promise of these Compacts is fully realized for all the people of the islands.

Thank you, Mr. Chairman.



[The prepared statement of Mr. Cohen follows:]

PREPARED STATEMENT OF DAVID B. COHEN, DEPUTY ASSISTANT SECRETARY OF THE  
INTERIOR FOR INSULAR AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the House Committee on International Relations, I am David B. Cohen, Deputy Assistant Secretary of the Interior for Insular Affairs. It is with pleasure that I make my first appearance before you today to discuss the Administration's proposal for legislation that would approve amendments to the Compact of Free Association with the Republic of the Marshall Islands (RMI) and the Federated States of Micronesia (FSM), which I will collectively refer to as the freely associated states or FAS. These amendments will, among other things, split the current Compact, which is a single, tri-lateral agreement among the United States, the RMI and the FSM, into two bi-lateral Compacts between the United States and the RMI and between the United States and the FSM, respectively.

I will focus my comments on the fiscal and economic provisions of the Compacts and the Fiscal Procedures Agreements, which are subsidiary agreements to the respective Compacts. In particular, I will discuss how proposed amendments to these provisions are designed to address the very legitimate concerns that the General Accounting Office (GAO), the Department of the Interior and others have raised with respect to the lack of accountability for Federal funds provided under the current Compact.

BACKGROUND

Over the 17-year life of the Compact, it is expected that the United States will ultimately have paid a total of \$1.04 billion in direct financial assistance to the RMI and \$1.54 billion to the FSM. There have been few restrictions on this financial assistance.

Over the last several years, the GAO has issued a number of reports that have raised concerns about the effectiveness of Federal assistance that has been provided under the Compact. We at the Department of the Interior, particularly in the Office of Insular Affairs, have had similar concerns for quite some time and have been greatly frustrated with the lack of tools properly to administer or track Federal assistance in a manner that could reasonably ensure that such assistance is having its intended effect. Most importantly, we have been hampered by the fact that the current Compact provides for large, loosely defined grants with no express enforcement mechanisms to ensure the efficient and effective expenditure of funds.

I am pleased that, in negotiating the provisions of the amended Compacts, the United States and its negotiating partners, the RMI and FSM, have sought to address the concerns raised by the GAO, the Department of the Interior and others.

ACCOUNTABILITY PROVISIONS

We have designed a completely new system to ensure that Compact funds are used productively. First, we will target our funding. Compact funds will be available for the following six high-priority sectors only:

- Health
- Education
- Public Infrastructure
- Environmental Protection
- Private Sector Development
- Public Sector Capacity Building

Special emphasis will be given to health and education. The respective Compacts and the related Fiscal Procedures Agreements describe the types of activities that are eligible for funding under each of these sectors. This will enable us to ensure that Compact funds are used exclusively for what the U.S. and our FAS partners have jointly identified as high-priority activities.

Second, the U.S. and its FAS partners will work together to control Compact budgets, including the allocation of funds among the six sectors, to ensure that the objectives of the Compact are being properly pursued. The process will work as follows: Each year, the RMI and FSM will propose their respective Compact budgets. Those proposals must be approved by bilateral joint committees—a U.S.-RMI joint committee for the RMI Compact and a U.S.-FSM joint committee for the FSM Compact. Each joint committee will include three members from the U.S. and two from the applicable freely associated state. The joint committees will ensure that the Compact budgets conform to the letter and spirit of the respective Compacts.

Third, we will require planning to ensure that Compact budgets further medium- and long-term goals and objectives. Each FAS will be required to prepare and periodically update various plans, which will be subject to the approval of the applicable joint committee. The Compact budgets will be expected to be consistent with these plans.

Fourth, we will give oversight personnel at the Department of the Interior the tools to protect against waste, fraud and abuse. The sector grants will be subject to terms and conditions similar to those applicable to Federal grants provided to state and local governments in the United States. The provisions designed to protect Compact funds include:

- The right of the U.S. to unilaterally impose certain special conditions, including additional reports, monitoring and prior approvals, in the event that a grantee has a history of unsatisfactory performance or is not financially stable.
- The right of the U.S. to withhold payments or suspend or terminate grants under certain conditions.
- The requirement that the FAS be subject to annual audits, and the right of the U.S. to conduct specific audits as it deems necessary.
- The right of the U.S. to have full access to all relevant FAS records.
- The requirement that the FAS follow procurement provisions designed to ensure competition, transparency and the avoidance of conflicts.
- The obligation of the FAS to fully cooperate with any U.S. investigation into the misuse of Compact funds.

We do not intend to make these tools the focus of our accountability program. We understand that the key to a successful accountability program is a continued strong relationship with our FAS partners, so that we can work together to ensure that the Compact funds benefit the people that they are intended to benefit. We also understand, however, that it is difficult to predict what will happen over a 20-year period, and it would be imprudent for us to not have the tools necessary to protect the American taxpayers' investment to improve life in the FAS.

The provisions described above will help us to ensure that the Compact funds reach their intended destination. But it will be of little good if the Compact funds reach their intended destination but do not have the intended effect. That is why, as the fifth prong of our new accountability program, we will apply performance standards and measures to each Compact grant. The joint committees will be responsible for applying appropriate performance standards and measures and evaluating performance on the basis thereof.

Sixth, we will provide for strong minimum standards for each FAS's financial management systems, and we will help them to meet these standards with technical assistance provided by my office and with the public sector capacity development grant.

Seventh, we will provide for detailed reporting, so that the U.S. and its FAS partners can track progress and identify any areas of concern.

Finally, the Department of the Interior is in the process of assembling a Compact oversight team based in the Pacific. We are hiring eight additional full-time employees who will focus exclusively on monitoring and oversight of Compact financial assistance and coordination with other Federal agencies providing program assistance to the FAS.

Additionally, Mr. Chairman, I would like to address the very important question of the impact that migration from the RMI, FSM and Palau, as authorized by the current Compacts, has had on Hawaii, Guam, the Northern Mariana Islands and American Samoa. Migrants have made important contributions to Hawaii and the territories, but have placed additional burdens on the local governments because of their utilization of services. The GAO reported significant outlays by these United States jurisdictions in aid of migrants and their families. With this history in mind, the legislation before you today includes \$15 million in annual mandatory funding as a contribution to these United States jurisdictions to mitigate the impact of migration.

While this \$15 million will be applied directly to address the impact of migration on United States jurisdictions, the financial assistance that we will provide to the FAS under the amended Compact is really the first line of defense against this impact. The GAO found that migration from the FAS is motivated mainly by the lack of proper education, health care and economic opportunity. The amended Compact is designed to address the problems that drive people to migrate: The targeted funding gives priority to health and education and also supports activities that are designed to promote economic development. We do not pretend that the amended Com-

pact will bring migration to a halt, but we sincerely hope that the people of the FAS, including those who choose to migrate, will, as a result of our new targeted assistance program, be healthier and better educated and hence more likely to be net contributors to whatever community in which they choose to live. Thus, the legislation seeks to improve the conditions that lead to migration from the FAS and ameliorate the effects of migration to the United States when it occurs.

#### OBSERVATIONS

Now that I have described our new program, Mr. Chairman, I would appreciate the opportunity to offer a few observations.

My first point is that when we talk about accountability, we are not talking about making the sovereign freely associated states accountable to the U.S. "Accountability" refers to the collective accountability that all three governments share both to the people of the islands and to the American taxpayer. All three governments have a collective responsibility to ensure that the American taxpayer's money will not be wasted, and, just as importantly, a collective responsibility to ensure that we deliver on our promise to help the people of the islands to improve their quality of life.

Although there will always be some who are initially resistant to change, there is widespread support in all three governments for the new accountability provisions. In fact, some of the most enthusiastic supporters are government "line managers" in the RMI and the FSM—those with the day-to-day responsibility for delivering public services to the people. These managers have endured years of frustration, struggling to keep essential programs going while knowing that a more productive allocation of Compact funds could have made their jobs easier.

A few have expressed concern that the new accountability provisions are harsh, and that the FAS are not equipped to comply with them. We disagree. The new provisions include standard remedies for waste, fraud and abuse. These remedies are the same ones to which state and local governments in the United States are subject when they receive grants from the Federal government. The RMI and FSM have had considerable experience with numerous United States Federal programs and these same remedies. I stress again, however, that the key to our accountability program is not the remedies that could conceivably be exercised in the worst case scenario, but the strong, cooperative relationship that we have with our partners in the islands.

In order to strengthen their ability to comply with the new requirements, the FAS may use Compact funds for appropriate training, software, equipment and guidance. For example, Compact funds could be used to purchase financial management systems, to provide training and hands-on guidance for local personnel or to supplement local personnel with outside experts.

The bottom line, Mr. Chairman, is that all three governments want to ensure that the people of the RMI and FSM receive the full benefit of the Compact assistance program. We can only achieve this with a strong accountability program. The U.S. cannot do it alone: We could not place sufficient personnel on the ground to properly do this job all by ourselves without seriously interfering with the sovereign governmental operations of our FAS partners, conjuring unfortunate images of a return to the old Trust Territory days. The FAS cannot do it alone: They are still in the process of developing the capacity to fully protect against the possibility of waste, fraud and abuse, and to properly measure the effectiveness of Compact-funded activities. All parties recognize that we need to work together to achieve the objectives that we all share.

#### BUILDING ON SUCCESS

Some might interpret our new accountability program as an admission that the original Compact has been a failure. Nothing could be further from the truth. The Compact has been a tremendous success. America's former Trust Territory wards have emerged as free, vibrant, sovereign democracies. The United States has achieved its strategic objective of denying other powers control over vast areas of the Pacific. The freely associated states have benefited from the United States defense umbrella, and their people enjoy the right to live, work and study in the United States. Significantly, these nations have become America's most loyal allies in the world. Cynics say that this loyalty has been purchased with Compact aid. No amount of money, however, could purchase the type of loyalty that leads so many of these islands' finest sons and daughters to serve proudly and honorably in the United States military, risking their lives to protect the freedom of all Americans. There is clearly a heartfelt bond between Americans and the people of these islands, and the Compact has only made it stronger. We Americans value this bond.

As for criticism of the original Compact, it is important to remember that that document invented a comprehensive new kind of international relationship that was completely untested at the time. It should surprise no one, and shame no one, that with the wisdom of 17 years of experience, the parties can think of ways to improve the Compact. The financial assistance and accountability provisions of the original Compact provide some opportunities for improvement. The United States and the freely associated states are committed to embracing those opportunities—working together, as partners, to ensure that the promise of these Compacts is fully realized for all of the people of the islands.

Mr. LEACH. Thank you, Mr. Cohen.

Ms. Westin.

**STATEMENT OF SUSAN S. WESTIN, MANAGING DIRECTOR,  
INTERNATIONAL AFFAIRS AND TRADE, GENERAL ACCOUNT-  
ING OFFICE**

Ms. WESTIN. Mr. Chairman and Members of the Subcommittee.

I am pleased to be here today to testify on the Compact of Free Association between the United States and the Pacific Island nations of the Federated States of Micronesia and the Republic of the Marshall Islands. Today I will discuss our review of the amended Compacts and related agreements that the United States signed with the FSM and the RMI in May and April of this year, respectively.

Specifically, I want to focus on three main topics: First, the potential cost to the U.S. Government; second, changes to both the structure and levels of future assistance; and finally, changes in accountability addressed in the amended Compacts and related agreements.

Turning to the first topic, the potential cost of the amended Compacts.

The amended Compacts of Free Association with the FSM and the RMI to renew expiring assistance would require about \$3.5 billion in funding over the next 20 years with a total possible authorization through 2086 of \$6.6 billion from the U.S. Congress. These dollar amounts include estimated inflation.

I direct your attention to Table 1, and you can also find Table 1 within my written statement. The share of new authorizations to the FMS would be about \$2.3 billion and would end after fiscal year 2023. The share of new authorizations to the RMI would be about \$1.2 billion for the next 20 years. Further funding of \$3.1 billion for the remainder of the period corresponds to extended grants to Kwajalein and payments related to U.S. military use of land at Kwajalein Atoll.

This new authorized funding would be provided to each country in the form of: Annual grant funds targeted to priority areas—such as health, education, and infrastructure—audit assistance, and disaster assistance; contributions to a trust fund for each country such that the trust fund earnings would become available to the FSM and the RMI in fiscal year 2024 to replace expiring annual grants; payments the U.S. Government makes to the RMI government that the RMI transfers to Kwajalein landowners to compensate for them for the U.S. use of their lands for defense sites; and an extension of Federal services that have been provided under the original Compact but are due to expire in fiscal year 2003.

In addition to the new authorized funding, the U.S. Government has further expenditures related to the FSM and RMI. These total about \$1.2 billion previously authorized and they include: The cost of U.S. program assistance; payments previously authorized for the U.S. military access to Kwajalein Atoll through 2016; and an estimated cost of about \$42 million for oversight and administration by the Department of the Interior.

Combining these sources of previously authorized funding with new authorizations of about \$6.6 billion, the total U.S. cost for all Compact-related payments related to the FSM and RMI could amount to about \$7.8 billion.

Further, the Administration is proposing to provide \$15 million annually for Hawaii, Guam and the Mariana Islands for the costs associated with the FSM and RMI citizens who migrate to those areas. This would add an additional \$300 million over the 20-year period.

Turning to my second topic, changes in the structure and levels of funding.

Under the U.S. proposals, annual grant amounts to each country would be reduced each year in order to encourage budgetary self-reliance and transition the countries from receiving annual U.S. grant funding to receiving annual trust fund earnings beginning in 2024.

Thus, the amended Compacts increase annual U.S. contributions to the trust funds each year by the grant reduction amount, and you can see that in Figures 1 and 2 on pages 10 and 11 of my written statement.

Annual grant assistance to the FSM would fall from a starting point of a real value of \$76 million next year to a real value of \$55 million in fiscal year 2023, and annual grant assistance to the RMI would fall over the same period to a real value of \$24 million at the end of the period.

This decrease in grant funding, combined with FSM and RMI population growth, would also result in falling per capita grant assistance over the funding period, particularly for the RMI. And I direct your attention to Figure 3 which is on page 12 of my written statement.

Using U.S. Census population growth rate projections for the two countries, the real value of grants per capita to the FSM would begin at an estimated \$687 in fiscal year 2004, and then would decrease over the length of the Compact to \$476 in fiscal year 2023. The real value of grants per capita to the RMI would also decrease to an estimated \$303 per capital in fiscal year 2023.

The reduction in real per capita funding over the next 20 years is a continuation of the decreasing amount of available grant funds that the FSM and the RMI had during the 17 years of prior Compact assistance.

The decline in annual grant assistance could impact FSM and RMI government budget and service provision, employment prospects, migration, and the overall GDP outlook. Challenges to achieving economic self-sustainability in the long run remains significant for both countries.

For example, private sector growth, which would rely on expand exports and a growing tourism industry, is limited by constraining

factors common to small island economies such as limited domestic markets, a narrow resource base, and a lack of infrastructure.

Given the challenges for achieving economic self-sustainability, the amended Compacts were designed to build trust funds that beginning in fiscal year 2024, yield annual earnings to replace grant assistance that ends in 2023. Our analysis shows that the trust funds may be insufficient to replace expiring grants, depending on assumptions about the rate of return on the trust funds.

Finally, I will discuss provisions in the amended Compacts designed to provide improved accountability over U.S. assistance. This is an area where GAO has offered several recommendations in past years, as we have found accountability over past assistance to be lacking.

In sum, most of our recommendations regarding future Compact assistance have been addressed with the introduction of strength and accountability measures in the signed amended Compacts and related agreements.

Let me just reiterate four examples, as Secretary Cohen went through them quite carefully.

The first I would note is the amended Compacts would require that the grants be targeted to priority areas, such as health, education, the environment, public infrastructure, including funding for maintenance.

Secondly, grant conditions normally applicable to U.S. state and local governments would apply to each grant.

Third, the United States could withhold payments if either country fails to comply with grant terms and conditions.

And fourth, joint economic management committees with each country would be established.

I must emphasize, however, that the successful implementation of the many new accountability provisions will require a sustained commitment, including resources, by all three governments to fulfill their new roles and responsibilities.

Mr. Chairman, this completes my statement. I, of course, will be happy to respond to any questions.

[The prepared statement of Ms. Westin follows:]

PREPARED STATEMENT OF SUSAN S. WESTIN, MANAGING DIRECTOR, INTERNATIONAL AFFAIRS AND TRADE, GENERAL ACCOUNTING OFFICE

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to testify on the Compact of Free Association between the United States and the Pacific Island nations of the Federated States of Micronesia, or the FSM, and the Republic of the Marshall Islands, or the RMI.<sup>1</sup> In 1986, the United States entered into this compact with the two countries after almost 40 years of administering the islands under the United Nations Trust Territory of the Pacific Islands. The Compact has provided U.S. assistance to the FSM and the RMI in the form of direct funding as well as federal services and programs for almost 17 years. Further, the Compact establishes U.S. defense rights and obligations in the region and allows for migration from both countries to the United States. Provisions of the Compact that address economic assistance were scheduled to expire in 2001; however, they can remain and have remained in effect while the United States and each nation renegotiated the affected provisions.<sup>2</sup>

<sup>1</sup>The FSM had a population of about 107,000 in 2000, while the RMI had a population of 50,840 in 1999, according to each country's most recent census.

<sup>2</sup>Other Compact provisions are also due to expire in late 2003 if not renegotiated and approved. These include (1) certain defense provisions, such as the requirement that the FSM and

Today I will discuss our review of the amended Compacts and related agreements that the United States signed with the FSM and the RMI in April and May of 2003, respectively. (According to a Department of State official, while the original Compact was one document that applied to both the FSM and the RMI, the Compact that has been amended is now a separate Compact with each nation.) Specifically, I will discuss changes to levels and structure of future assistance, including the potential cost to the U.S. government. Further, I will comment on changes in accountability and other key issues addressed in the amended Compacts and related agreements. Our testimony is based on our reports on the Compact published over the past several years as well as our assessment of the amended Compacts that was requested by Chairman Leach and Ranking Minority Member Faleomavaega, Subcommittee on Asia and the Pacific, House Committee on International Relations; Ranking Minority Member Lantos, House Committee on International Relations; Ranking Minority Member Rahall, House Committee on Resources; and Congressman Bereuter.

#### SUMMARY

The amended Compacts of Free Association with the FSM and the RMI to renew expiring assistance would require about \$3.5 billion in funding over the next 20 years with a total possible authorization through 2086 of \$6.6 billion from the U.S. Congress.<sup>3</sup> The amended Compacts would provide decreasing levels of annual assistance over a 20-year term (2004–2023) in order to encourage budgetary self-reliance. Simultaneously, the Compacts would require building up a trust fund (with contributions that would increase annually) for each country to generate annual earnings that would replace the grants that end in 2023. Per capita grant assistance would fall over the 20-year period, particularly for the RMI. At an assumed trust fund rate of return (6 percent), in 2024 the RMI trust fund would cover expiring grant assistance, while the FSM trust fund would be insufficient to replace grants. By the year 2040, however, RMI trust fund returns also would be unable to replace grant funding.

The amended Compacts include many strengthened reporting and monitoring measures that could improve accountability if diligently implemented. The amended Compacts and related agreements have addressed most of the recommendations that we have made in past reports regarding assistance accountability. For example, assistance would be provided through grants targeted to priority areas, such as health and education, and with specific terms and conditions attached. Annual reporting and consultation requirements would be expanded, and funds could be withheld for noncompliance with Compact terms and conditions. The successful implementation of the many new accountability provisions will require a sustained commitment and appropriate resources from the United States, the FSM, and the RMI.

The amended Compacts address other key issues. One key change to Compact defense provisions would occur—U.S. military access to Kwajalein Atoll in the RMI could be extended from 2016 to 2086. This extension would cost \$3.4 billion of the total possible authorization of \$6.6 billion. Amended Compact provisions addressing one additional key area—immigration—have been strengthened by adding new restrictions and expressly applying the provisions of the Immigration and Nationality Act of 1952 (INA), as amended (P.L. 82–414), to Compact migrants. FSM and RMI citizens entering the United States would need to carry a passport, and regulations could be promulgated that would impose time limits and other conditions on a Compact migrant's admission to the United States.

#### BACKGROUND

In 1986, the United States and the FSM and the RMI entered into the Compact of Free Association. This Compact represented a new phase of the unique and special relationship that has existed between the United States and these island areas since World War II. It also represented a continuation of U.S. rights and obligations first embodied in a U.N. trusteeship agreement that made the United States the Ad-

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the RMI refrain from actions that the United States determines are incompatible with U.S. defense obligations (the defense veto), and (2) federal services listed in the Compact.

<sup>3</sup>Although the amended Compacts have been signed by the U.S., FSM, and RMI governments, they have not been approved by the legislature of any country. Therefore, in our testimony we describe the amended Compacts' requirements and potential impact in a conditional manner in recognition that the Compacts have not yet been enacted. The total possible cost to renew expiring assistance in fiscal year 2004 U.S. dollars would be \$3.8 billion on the basis of the Congressional Budget Office forecasted inflation rate (see appendix).

ministering Authority of the Trust Territory of the Pacific Islands.<sup>4</sup> The Compact provided a framework for the United States to work toward achieving its three main goals: (1) to secure self-government for the FSM and the RMI, (2) to assist the FSM and the RMI in their efforts to advance economic development and self-sufficiency, and (3) to ensure certain national security rights for all of the parties. The first goal has been met. The FSM and the RMI are independent nations and are members of international organizations such as the United Nations.

The second goal of the Compact—advancing economic development and self-sufficiency for both countries—was to be accomplished primarily through U.S. direct financial payments (to be disbursed and monitored by the U.S. Department of the Interior) to the FSM and the RMI. For the 15-year period covering 1987 through 2001, funding was provided at levels that decreased every 5 years. For 2002 and 2003, while negotiations to renew expiring Compact provisions were ongoing, funding levels increased to equal an average of the funding provided during the previous 15 years. Thus, funds available to the two governments were “bumped-up” during the last 2 years of assistance.<sup>5</sup> For 1987 through 2003, U.S. assistance to the FSM and the RMI to support economic development is estimated on the basis of Interior data, to be about \$2.1 billion.<sup>6</sup> We have found that many Compact-funded projects in the FSM and the RMI experienced problems because of poor planning and management, inadequate construction and maintenance, or misuse of funds. Further the U.S., FSM, and RMI governments provided little accountability over Compact expenditures and have not ensured that funds were spent effectively or efficiently.

Economic self-sufficiency has not been achieved. Although total U.S. assistance (Compact direct funding as well as U.S. programs and services) as a percentage of total government revenue has fallen in both countries (particularly in the FSM), the two nations remain highly dependent on U.S. funds. U.S. direct assistance has maintained standards of living that are higher than could be achieved in the absence of U.S. support. In addition, U.S. programs have been extended to the FSM and the RMI to provide a wide range of critical services, such as health care, education, telecommunications, and job training, but in most cases local conditions have impaired the programs’ effectiveness.<sup>7</sup>

The third goal of the Compact—securing national security rights for all parties—has been achieved. At the time that the Compact was negotiated, the United States was concerned about the use of the islands of the FSM and the RMI as “springboards for aggression” against the United States, as they had been used in World War II, and the Cold War incarnation of this threat—the Soviet Union. The Compact and its related agreements established several key defense rights for all three countries. The Compact obligates the United States to defend the FSM and the RMI against an attack or the threat of attack in the same way it would defend its own citizens. The Compact also provides the United States with the right of “strategic denial,” the ability to prevent access to the islands and their territorial waters by the military personnel of other countries or the use of the islands for military purposes. In addition, the Compact grants the United States a “defense veto” over actions by the FSM or the RMI governments that the United States determines are

<sup>4</sup>From 1947 to 1986, the United States administered this region under a trusteeship agreement that obligated it to foster the development of political institutions and move the Trust Territory toward self-government and promote economic, social, and educational advancement. In addition, the agreement allowed the United States to establish military bases and station forces in the Trust Territory and close off areas for security reasons as part of its rights. In addition to the islands of the FSM and the RMI, the Trust Territory included Palau and the Northern Mariana Islands.

<sup>5</sup>The FSM received additional U.S. grant assistance of about \$17.5 million in fiscal year 2002 and about \$18 million in fiscal year 2003. The RMI received additional U.S. grant assistance of about \$3.1 million in fiscal year 2002 and \$3.3 million in fiscal year 2003 (excluding increased payments related to Kwajalein land use).

<sup>6</sup>The cost of prior assistance in fiscal year 2004 U.S. dollars was \$2.6 billion. This estimate does not include payments for Compact authorized federal services or U.S. military use of Kwajalein Atoll land, nor does it include investment development funds provided under section 111 of Public Law 99-239. Additionally, the Compact served as the vehicle to reach a full settlement of all compensation claims related to U.S. nuclear tests conducted on Marshallese atolls between 1946 and 1958. In a Compact-related agreement, the U.S. government agreed to provide \$150 million to create a trust fund. While the Compact and its related agreements represented the full settlement of all nuclear claims, it provided the RMI with the right to submit a petition of “changed circumstance” to the U.S. Congress requesting additional compensation. The RMI government submitted such a petition in September 2000, which the U.S. executive branch is still reviewing.

<sup>7</sup>For more information on U.S. programs and services provided to the FSM and the RMI, see U.S. General Accounting Office, *Foreign Assistance: Effectiveness and Accountability Problems Common in U.S. Programs to Assist Two Micronesian Nations*, GAO-02-70 (Washington, D.C.: Jan. 22, 2002).



incompatible with its authority and responsibility for security and defense matters in these countries. Finally, through a Compact-related agreement, the United States secured continued access to military facilities on Kwajalein Atoll in the RMI through 2016.<sup>8</sup> In a previous report, we identified Kwajalein Atoll as the key U.S. defense interest in the two countries.<sup>9</sup> Of these rights, only the defense veto is due to expire in 2003 if not renegotiated.

Another aspect of the special relationship between the FSM and the RMI and the United States involves the unique immigration rights that the Compact grants. Through the original Compact, citizens of both nations are allowed to live and work in the United States as “nonimmigrants” and can stay for long periods of time, with few restrictions.<sup>10</sup> Further, the Compact exempted FSM and RMI citizens from meeting U.S. passport, visa, and labor certification requirements when entering the United States. In recognition of the potential adverse impacts that Hawaii and nearby U.S. commonwealths and territories could face as a result of an influx of FSM and RMI citizens, the Congress authorized Compact impact payments to address the financial impact of these nonimmigrants on Guam, Hawaii, and the Commonwealth of the Northern Mariana Islands (CNMI).<sup>11</sup> By 1998, more than 13,000 FSM and RMI citizens had made use of the Compact immigration provisions and were living in the three areas. The governments of the three locations have provided the U.S. government with annual Compact nonimmigrant impact estimates; for example, in 2000 the total estimated impact for the three areas was \$58.2 million. In that year, Guam received \$7.58 million in impact funding, while the other two areas received no funding.<sup>12</sup>

In the fall of 1999, the United States and the two Pacific Island nations began negotiating economic assistance and defense provisions of the Compact that were due to expire. Immigration issues were also addressed. According to the State Department, the aims of the amended Compacts are to (1) continue economic assistance to advance self-reliance, while improving accountability and effectiveness; (2) continue the defense relationship, including a 50-year lease extension (beyond 2016) of U.S. military access to Kwajalein Atoll in the RMI; (3) strengthen immigration provisions; and (4) provide assistance to lessen the impact of Micronesian migration on Hawaii, Guam, and the CNMI.

#### AMENDED COMPACTS WOULD ALTER ASSISTANCE LEVELS AND STRUCTURE

Under the amended Compacts with the FSM and the RMI, new congressional authorizations of approximately \$3.5 billion in funding would be required over the next 20 years, with a total possible authorization through 2086 of \$6.6 billion. Economic assistance would be provided to the two countries for 20 years—from 2004 through 2023—with all subsequent funding directed to the RMI for continued U.S. access to military facilities in that country. Under the U.S. proposals, annual grant amounts to each country would be reduced each year in order to encourage budgetary self-reliance and transition the countries from receiving annual U.S. grant funding to receiving annual trust fund earnings. Annual grant assistance to the FSM would fall from a real value of \$76 million in fiscal year 2004 to a real value of \$55 million in fiscal year 2023. Annual grant assistance to the RMI would fall from a real value of \$35 million to a real value of \$24 million over the same period. This decrease in grant funding, combined with FSM and RMI population growth, would also result in falling per capita grant assistance over the funding period—particularly for the RMI. If the trust funds established in the amended Compacts earn a 6 percent rate of return, the FSM trust fund would be insufficient to replace expiring annual grants. The RMI trust fund would replace grants in fiscal year 2024 but would become insufficient for this purpose by fiscal year 2040.

<sup>8</sup>U.S. access to Kwajalein Atoll is established through the U.S.–RMI Military Use and Operating Rights Agreement (MUORA). Funding provided for U.S. military access to Kwajalein for the years 1987 to 2003 is estimated, on the basis of Interior data, to be \$64 million for development assistance and \$144 million for the RMI government to compensate landowners for U.S. use of their lands.

<sup>9</sup>See U.S. General Accounting Office, *Foreign Relations: Kwajalein Atoll Is the Key U.S. Defense Interest in Two Micronesian Nations*, GAO–02–119 (Washington, D.C.: Jan. 22, 2002).

<sup>10</sup>Typically, nonimmigrants include those individuals who are in the United States temporarily as visitors, students, or workers.

<sup>11</sup>Payments were also authorized for American Samoa, but impact compensation has not been sought.

<sup>12</sup>See U.S. General Accounting Office, *Foreign Relations: Migration From Micronesian Nations Has Had Significant Impact on Guam, Hawaii, and the Commonwealth of the Northern Mariana Islands*, GAO–02–40 (Washington, D.C.: Oct. 5, 2001).

*Amended Compacts Could Cost the U.S. Government \$6.6 Billion*

Under the amended Compacts with the FSM and the RMI, new congressional authorizations of approximately \$6.6 billion could be required for U.S. payments from fiscal years 2004 to 2086, of which \$3.5 billion would be required for the first 20 years of the Compacts (see table 1). The share of new authorizations to the FSM would be about \$2.3 billion and would end after fiscal year 2023. The share of new authorizations to the RMI would be about \$1.2 billion for the first 20 years, with about \$300 million related to extending U.S. military access to Kwajalein Atoll through 2023. Further funding of \$3.1 billion for the remainder of the period corresponds to extended grants to Kwajalein and payments related to U.S. military use of land at Kwajalein Atoll.<sup>13</sup> The cost of this \$6.6 billion new authorization, expressed in fiscal year 2004 U.S. dollars, would be \$3.8 billion (see the appendix for a breakout of estimated new U.S. authorizations to the FSM and the RMI in fiscal year 2004 U.S. dollars).

This new authorized funding would be provided to each country in the form of

- annual grant funds targeted to priority areas (such as health, education, and infrastructure), audit assistance, and disaster assistance;
- contributions to a trust fund for each country such that trust fund earnings would become available to the FSM and the RMI in fiscal year 2024 to replace expiring annual grants;
- payments the U.S. government makes to the RMI government that the RMI transfers to Kwajalein landowners to compensate them for the U.S. use of their lands for defense sites; and
- an extension of federal services that have been provided under the original Compact but are due to expire in fiscal year 2003.

Table 1: Estimated New U.S. Authorizations for the FSM and the RMI, Fiscal Years 2004–2086

(U.S. dollars in millions)

	FSM	RMI	Total
<b>Fiscal years 2004–2023</b>			
Grants for priority areas	\$1,612	\$701*	\$2,313
Trust fund contributions	517	276	793
Payments for U.S. military use of Kwajalein Atoll land**	Not applicable	191	191
Compact-authorized federal services***	167	37	204
New U.S. authorization for 2004–2023	\$2,296	\$1,204	\$3,500
<b>Fiscal years 2024–2086</b>			
Grants to Kwajalein	Not applicable	\$948*	\$948
Payments for U.S. military use of Kwajalein Atoll land	Not applicable	2,133	2,133
Possible New U.S. authorization for 2024–2086	Not applicable	\$3,081	\$3,081
<b>Fiscal years 2004–2086, total new U.S. authorizations for the FSM and the RMI</b>	<b>\$2,296</b>	<b>\$4,285</b>	<b>\$6,581</b>

Source: GAO estimate based on the amended Compacts. Under the amended Compacts, U.S. payments are adjusted for inflation at two-thirds of the percentage change in the U.S. gross domestic product implicit price deflator.

Note: Numbers may not sum due to rounding.

\*The 1986 U.S.–RMI Military Use and Operating Rights Agreement (MUORA) grants the United States access to certain portions of Kwajalein Atoll and provides \$24.7 million of funding for development and impact on Kwajalein from 2004 to 2016. Approximately \$112 million of the new proposed U.S. grant assistance of \$701 million is for increasing this funding to Kwajalein from 2004 to 2016 and for continuation of the increased level of funding through 2066 and possibly to 2086 if the agreement is extended.

\*\*As part of the 1986 MUORA, the RMI government has also allocated \$162 million of U.S. funding from 2004 to 2016 under this agreement to landowners via a traditional distribution system to compensate them for the U.S. use of their lands for defense sites. The U.S. proposal increases these payments from 2004 to 2016 and continues the increased level of payments through 2066 and possibly to 2086 if the agreement is extended.

\*\*\*Federal services authorized in the Compact include weather, aviation, and postal services. Services associated with the Federal Emergency Management Agency have been excluded. An estimate of assistance from the U.S. Agency for International Development's Office of Disaster Assistance has not been included.

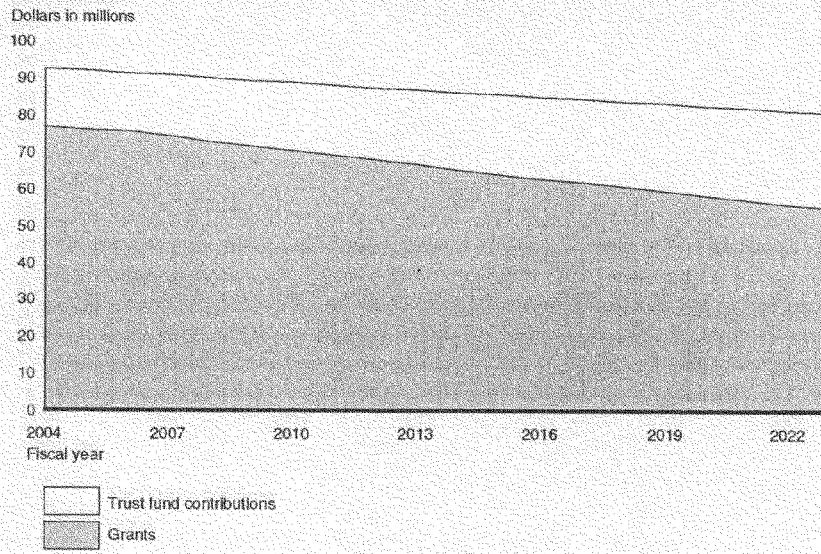
<sup>13</sup>U.S. access to Kwajalein Atoll in the RMI has already been secured through 2016 through a Compact-related agreement. The U.S. proposal to the RMI extends this funding to 2066, with an additional 20-year optional lease at that point.

In addition to the new authorized funding, the U.S. government has further expenditures related to the FSM and the RMI. These include (1) the cost of U.S. program assistance, estimated at around \$1 billion<sup>14</sup> to the two countries for the next 20 years; (2) payments previously authorized of about \$187 million for U.S. military access to Kwajalein Atoll in the RMI through 2016; and (3) oversight and administration by the Department of the Interior, estimated at a cost of around \$42 million over the 20-year period. Combining these three sources of U.S. funding (\$1.2 billion) with new authorizations (\$6.6 billion), the total U.S. cost for all Compact-related payments related to the FSM and the RMI would amount to about \$7.8 billion, including estimated inflation.

*Amended Compacts Would Reduce U.S. Grant Support Annually*

Under the U.S. proposals, annual grant amounts to each country would be reduced each year in order to encourage budgetary self-reliance and transition the countries from receiving annual U.S. grant funding to receiving annual trust fund earnings. Thus, the amended Compacts increase annual U.S. contributions to the trust funds each year by the grant reduction amount (see figs. 1 and 2). Annual grant assistance to the FSM would fall from a real value of \$76 million in fiscal year 2004 to a real value of \$55 million in fiscal year 2023.<sup>15</sup> Annual grant assistance to the RMI would fall from a real value of \$35 million to a real value of \$24 million over the same period.

**Figure 1: Estimated New U.S. Authorizations for Economic Assistance to the FSM by Type of Funding, Fiscal Years 2004-2023 (fiscal year 2004 U.S. dollars, in millions)**



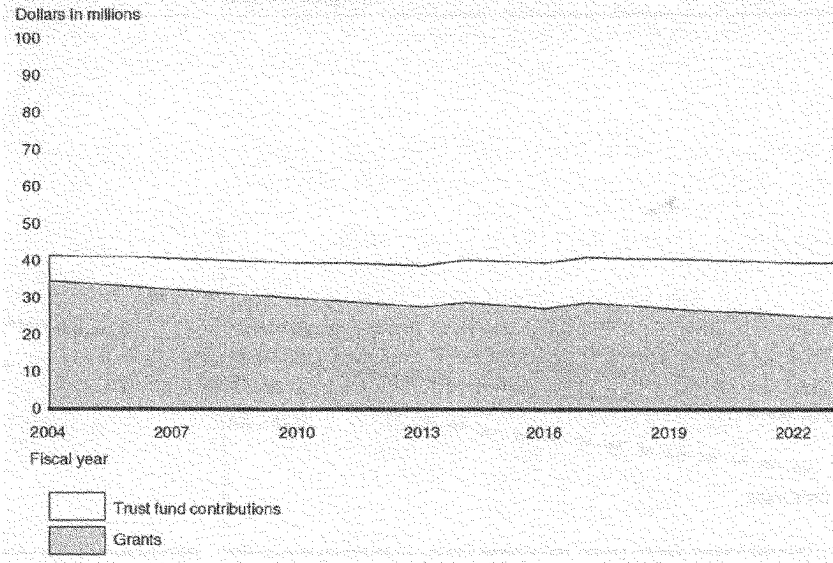
Source: GAO analyses of amended Compacts.

Note: This analysis excludes program assistance.

<sup>14</sup>In addition to Compact authorized federal services, numerous U.S. federal agencies extend specific programs offered in the United States, such as Pell grants and Head Start, to the FSM and the RMI in areas such as education and health. The level of this program assistance has varied over time as certain programs have been eliminated and other programs have been introduced. Currently, the U.S. Congress is reviewing a number of education programs to the FSM and the RMI, and the level of continued program assistance is uncertain.

<sup>15</sup>Although new authorization figures are provided in current dollars so that total costs to the U.S. government can be identified, this display of economic assistance is provided in fiscal year 2004 constant dollars for comparative purposes to show the impact of changes in government funding on the economy and population.

**Figure 2: Estimated New U.S. Authorizations for Economic Assistance to the RMI by Type of Funding, Fiscal Years 2004-2023 (fiscal year 2004 U.S. dollars, in millions)**



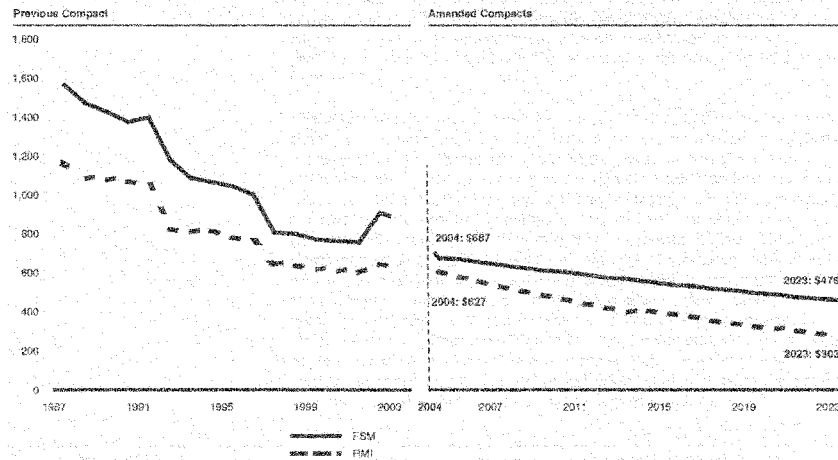
Source: GAO analyses of amended Compacts.

Note: This analysis excludes program assistance and payments for U.S. military use of Kwajalein Atoll land.

This decrease in grant funding, combined with FSM and RMI population growth, would also result in falling per capita grant assistance over the funding period—particularly for the RMI (see fig. 3).<sup>16</sup> Using U.S. Census population growth rate projections for the two countries, the real value of grants per capita to the FSM would begin at an estimated \$687 in fiscal year 2004 and would further decrease over the course of the compact to \$476 in fiscal year 2023. The real value of grants per capita to the RMI would begin at an estimated \$627 in fiscal year 2004 and would further decrease to an estimated \$303 in fiscal year 2023. The reduction in real per capita funding over the next 20 years is a continuation of the decreasing amount of available grant funds (in real terms) that the FSM and the RMI had during the 17 years of prior Compact assistance.

<sup>16</sup>The migration impact of the amended Compacts is difficult to determine, but if migration slows as a result of the amended Compacts or other economic and demographic influences, then our per capita estimates would be overstated.

Figure 3: Estimated FSM and RMI per Capita Grant Assistance for Fiscal Years 1987-2023 (fiscal year 2004 U.S. dollars)



Source: GAO analyses of amended Compacts.

Note: This analysis includes only Compact funds available to governments. Therefore, the analysis excludes investment development funds provided under section 111 of Public Law 99-239, trust fund contributions, federal programs and services, audit assistance, and MUORA-related lease payments that the RMI government transfers to Kwajalein landowners. U.S. Census population historical and projected population growth rates are used in conjunction with the most recent country Census data. U.S. Census projections are subject to revision.

The decline in annual grant assistance could impact FSM and RMI government budget and service provision, employment prospects, migration, and the overall gross domestic product (GDP) outlook, though the effect is likely to differ between the two countries. For example, the FSM is likely to experience fiscal pressures in 2004, when the value of Compact grant assistance drops in real terms by 8 percent relative to the 2001 level (a reduction equal to 3 percent of GDP).<sup>17</sup> For the RMI, however, the proposed level of Compact grant assistance in 2004 would actually be 8 percent higher in real terms than the 2001 level (an increase equal to 3 percent of GDP). According to the RMI, this increase would likely be allocated largely to the infrastructure investment budget and would provide a substantial stimulus to the economy in the first years of the new Compact.

Challenges to achieving economic self-sustainability in the long run remain significant for both countries. First, education and health indicators show the need to improve basic services in these areas, as the nations face challenges with regard to literacy rates, high birth rates, and access to safe water. Second, private sector employment is largely made up of services and distribution activities that support the public sector such that employment prospects are uncertain, given declining U.S. assistance. Third, private sector growth, which would rely on expanded exports and a growing tourism industry, is limited by constraining factors common to small island economies, such as limited domestic markets, a narrow resource base, and a lack of infrastructure.<sup>18</sup> Fourth, socioeconomic activities, infrastructure, and population may be vulnerable to the impacts of climate change because the two countries could experience coastal inundation, more frequent droughts and floods, and increases in tropical cyclone intensities that could damage transport infrastructure.<sup>19</sup>

<sup>17</sup>The level of grant assistance in 2001 was converted into fiscal year 2004 dollars for comparison purposes.

<sup>18</sup>Potential sources of private sector growth include export earnings from three sectors: commercial agriculture, fisheries, and tourism.

<sup>19</sup>The Intergovernmental Panel on Climate Change predicts that rising sea levels over the next 50 years will result in land loss for areas in the RMI and the FSM that will disrupt virtually all economic and social sectors. The sea level rises could trigger significant migration because resettlement within national boundaries, or abandonment of some atolls altogether, may be the only viable option, with substantial costs for resettlement. For example, in the RMI the average elevation on Majuro is 2.2 meters. In Kwajalein Atoll, Ebeye's average elevation is 2.2 meters, and the maximum elevation is 2.5 meters.

*Trust Funds May Be Insufficient to Replace Expiring Grants*

Given the challenges for achieving economic self-sustainability, the amended Compacts were designed to build trust funds that, beginning in fiscal year 2024, yield annual earnings to replace grant assistance that ends in 2023. Both the FSM and the RMI are required to provide an initial contribution to their respective trust funds of \$30 million. In designing the trust funds, the State Department assumed that the trust fund would earn a 6 percent rate of return.<sup>20</sup> The amended Compacts do not address whether trust fund earnings should be sufficient to cover expiring federal services, but they do create a structure that sets aside earnings above 6 percent, should they occur, that could act as a buffer against years with low or negative trust fund returns. Importantly, whether the estimated value of the proposed trust funds would be sufficient to replace grants or create a buffer account would depend on the rate of return that is realized (see table 2).<sup>21</sup>

- If the trust funds earn a 6 percent rate of return, then the FSM trust fund would yield a return of \$57 million in fiscal year 2023, an amount insufficient to replace expiring grants by an estimated value of \$27 million. The RMI trust fund would yield a return of \$33 million in fiscal year 2023, an estimated \$5 million above the amount required to replace grants in fiscal year 2024. Nevertheless, the RMI trust fund would become insufficient for replacing grant funding by fiscal year 2040.
- If the trust funds are comprised of both stocks (60 percent of the portfolio) and long-term government bonds (40 percent of the portfolio) such that the forecasted average return is around 7.9 percent, then both trust funds would yield returns sufficient to replace expiring grants and to create a buffer account. However, while the RMI trust fund should continue to grow in perpetuity, the FSM trust fund would eventually deplete the buffer account and fail to replace grant funding by fiscal year 2048.

Table 2: Estimated Performance for the FSM and the RMI Trust Funds under Alternative Rates of Return  
(U.S. dollars in millions)

	Fund earns State Dept. assumed return (6%)		Fund earns return from 60% stocks and 40% long-term government bonds (7.9%)	
	FSM	RMI	FSM	RMI
Projected value of trust fund at the end of FY 2023	\$1,013	\$575	\$1,255	\$717
Projected value of FY 2023 trust fund return	57	33	92	53
Surplus of FY 2023 trust fund return over FY 2024 required grant funding	-27	5	8	25
Year when trust fund return is unable to replace grant funding	FY 2024	FY 2040	FY 2048	*

Source: GAO estimate based on amended Compacts adjusted for expected inflation.

Note: The historic average real rate of return from the U.S. stock market has been 7 percent. Assuming a trust fund based on 60 percent stocks, which at a forecasted inflation rate of 2.2 percent would earn a 9.2 percent return, and 40 percent long-term U.S. government bonds, which would earn the forecasted nominal rate of return of 5.8 percent, a nominal rate of return of 7.9 percent could be achieved for the trust fund. The estimated value of the trust funds includes monies accrued in the buffer accounts and reflect the initial contribution made by the FSM and the RMI to their respective trust funds.

\*The RMI trust fund under this scenario continues to grow in perpetuity. However, this analysis assumes a steady real rate of return and does not account for volatility in returns.

AMENDED COMPACTS HAVE STRENGTHENED ACCOUNTABILITY OVER U.S. ASSISTANCE

I will now discuss provisions in the amended Compacts designed to provide improved accountability over, and effectiveness of, U.S. assistance. This is an area where we have offered several recommendations in past years, as we have found accountability over past assistance to be lacking. As I discuss key proposed accountability measures, I will note where appropriate whether our previous recommenda-

<sup>20</sup>The State Department chose a 6 percent return in order to reflect a conservative investment strategy. This rate of return can be compared with the current average forecasted return for long-term U.S. government bonds of 5.8 percent by the Congressional Budget Office.

<sup>21</sup>This analysis does not take into account volatile or negative returns. The sufficiency of either the FSM or the RMI trust fund to replace grants has not been tested under conditions of market volatility.

tions have been addressed. In sum, most of our recommendations regarding future Compact assistance have been addressed with the introduction of strengthened accountability measures in the signed amended Compacts and related agreements. I must emphasize, however, that the extent to which these provisions will ultimately provide increased accountability over, and effectiveness of, future U.S. assistance will depend upon how diligently the provisions are implemented and monitored by all governments.

The following summary describes key accountability measures included in the amended Compacts and related agreements:

- The amended Compacts would require that grants be targeted to priority areas such as health, education, the environment, and public infrastructure.<sup>22</sup> In both countries, 5 percent of the amount dedicated to infrastructure, combined with a matching amount from the island governments, would be placed in an infrastructure maintenance fund. We recommended in a September 2000 report that the U.S. government should negotiate provisions that would provide future Compact funding through grants targeted to priority areas and that funding should be set aside for infrastructure maintenance.<sup>23</sup>
- Compact-related agreements with both countries (the so-called “fiscal procedures agreements”) would establish a joint economic management committee for the FSM and the RMI that would meet at least once annually. The duties of the committees would include (1) reviewing planning documents and evaluating island government progress to foster economic advancement and budgetary self-reliance; (2) consulting with program and service providers and other bilateral and multilateral partners to coordinate or monitor the use of development assistance; (3) reviewing audits; (4) reviewing performance outcomes in relation to the previous year’s grant funding level, terms, and conditions; and (5) reviewing and approving grant allocations (which would be binding) and performance objectives for the upcoming year. In our previously cited 2000 report, we recommended that the U.S. government negotiate an expanded agenda for future annual consultations. Further, the fiscal procedures agreements would give the United States control over the annual review process: The United States would appoint three government members to each committee, including the chairman, while the FSM or the RMI would appoint two government members.
- Grant conditions normally applicable to U.S. state and local governments would apply to each grant. General terms and conditions for the grants would include conformance to plans, strategies, budgets, project specifications, architectural and engineering specifications, and performance standards. Other special conditions or restrictions could be attached to grants as necessary. Specific post-award requirements address financial administration by establishing, for example, (1) improved financial reporting, accounting records, internal controls, and budget controls; (2) appropriate use of real property and equipment; and (3) competitive and well-documented procurement. In our 2000 report, we recommended that future assistance be provided with grants that had specific requirements.
- The United States could withhold payments if either country fails to comply with grant terms and conditions. The withholding amount would be proportional to the breach of the term or condition. In addition, funds could be withheld if the FSM or RMI governments do not cooperate in U.S. investigations regarding whether Compact funds have been used for purposes other than those set forth in the amended Compacts. In our 2000 report, we recommended that withholding of funds be allowed.
- The fiscal procedures agreements would require numerous reporting requirements for the two countries. For example, each country must prepare strategic planning documents that are updated regularly, annual budgets that propose sector expenditures and performance measures, annual reports to the U.S. President regarding the use of assistance, quarterly and annual financial reports, and quarterly grant performance reports. In our 2000 report, we recommended that expanded reporting requirements be negotiated.

<sup>22</sup> Public infrastructure projects would be focused in the areas of education, health, and safety. Progress reports for each project would be required, and funding would be provided on a reimbursable basis. For the RMI, not less than 30 percent or more than 50 percent of the annual grant assistance would be available for public infrastructure projects.

<sup>23</sup> See U.S. General Accounting Office, *Foreign Assistance: U.S. Funds to Two Micronesian Nations Had Little Impact on Economic Development*, GAO/NSIAD-00-216 (Washington, D.C.: Sept. 22, 2000) for a review of the first 12 years of direct Compact assistance.

- The amended Compacts' trust fund management agreements would grant the U.S. government control over trust fund management: The United States would appoint three members, including the chairman, to a committee to administer the trust funds, while the FSM or the RMI would appoint two members. After the initial 20 years, the trust fund committee would remain the same, unless otherwise agreed by the original parties. We have reported that well-designed trust funds can provide a sustainable source of assistance and reduce long-term aid dependence.<sup>24</sup>

The fiscal procedures agreements would require the joint economic management committees to consult with program providers in order to coordinate future U.S. assistance. However, we have seen no evidence demonstrating that an overall assessment of the appropriateness, effectiveness, and oversight of U.S. programs, as we recommended, has been conducted.<sup>25</sup>

The successful implementation of the many new accountability provisions will require a sustained commitment by the three governments to fulfill their new roles and responsibility. Appropriate resources from the United States, the FSM, and the RMI represent one form of this commitment. While the amended Compacts do not address staffing issues, officials from Interior's Office of Insular Affairs have informed us that their office intends to post six staff in a new Honolulu office. According to an Interior official, these staff will consist of a health grant specialist, an education grant specialist, an accountant, an economist, an auditor, and an office assistant. Interior can also contract with the Army Corps of Engineers for engineering assistance when necessary. Honolulu-based staff may spend about half of their time in the FSM and the RMI. Further, an Interior official noted that his office has brought one new staff on board in Washington, D.C., and intends to post one person to work in the RMI (one staff is already resident in the FSM). We have not conducted an assessment of Interior's staffing plan and rationale and cannot comment on the adequacy of the plan or whether it represents sufficient resources in the right location.

#### AMENDED COMPACTS ADDRESS OTHER KEY AREAS

##### *U.S. Military Access to Kwajalein Atoll Could Be Extended Until 2086*

The most significant defense-related change in the amended Compacts is the extension of U.S. military access to Kwajalein Atoll in the RMI. While the U.S. government had already secured access to Kwajalein until 2016 through the 1986 MUORA, the newly revised MUORA would grant the United States access until 2066, with an option to extend for an additional 20 years to 2086. According to a Department of Defense (DOD) official, recent DOD assessments have envisioned that access to Kwajalein would be needed well beyond 2016. He stated that DOD has not undertaken any further review of the topic, and none is currently planned. This official also stated that, given the high priority accorded to missile defense programs and to enhancing space operations and capabilities by the current administration, and the inability to project the likely improvement in key technologies beyond 2023, the need to extend the MUORA beyond 2016 is persuasive. He also emphasized that the U.S. government has flexibility in that it can end its use of Kwajalein Atoll any time after 2023 by giving advance notice of 7 years and making a termination payment.

We have estimated that the total cost of this extension would be \$3.4 billion (to cover years 2017 through 2086).<sup>26</sup> The majority of this funding (\$2.3 billion) would be provided by the RMI government to Kwajalein Atoll landowners, while the remainder (\$1.1 billion) would be used for development and impact on Kwajalein Atoll. According to a State Department official, there are approximately 80 landowners. Four landowners receive one-third of the annual payment, which is based on acreage owned. This landowner funding (along with all other Kwajalein-related funds) through 2023 would not be provided by DOD but would instead continue as an Interior appropriation. Departmental responsibility for authorization and appropriation for Kwajalein-related funding beyond 2023 has not been determined according to the State Department. The Kwajalein Atoll landowners have not yet agreed to sign an amended land-use agreement with the RMI government to extend U.S. access to Kwajalein beyond 2016 at the funding levels established in the amended Compact.

<sup>24</sup> See U.S. General Accounting Office, *Foreign Assistance: Lessons Learned From Donors' Experiences in the Pacific Region*, GAO-01-808 (Washington, D.C.: Aug. 17, 2001).

<sup>25</sup> This recommendation was included in GAO-02-70.

<sup>26</sup> Our figure of \$3.4 billion is adjusted for inflation.



A few expiring provisions would be extended indefinitely in the amended Compacts. The “defense veto”—the ability of the United States to veto actions by the FSM or the RMI governments that the United States determines are incompatible with U.S. authority and responsibility for security and defense matters in the two countries—has been extended. In addition, the ability of FSM and RMI citizens to volunteer to serve in the U.S. military would be extended. According to a DOD official, this is a beneficial provision since it, for example, gives the United States access to persons with specialized knowledge and understanding of Pacific cultures while also providing career opportunities for FSM and RMI citizens.<sup>27</sup>

#### AMENDED COMPACTS WOULD STRENGTHEN IMMIGRATION PROVISIONS

While the original Compact’s immigration provisions are not expiring, the State Department targeted them as requiring changes. The amended Compacts would strengthen the immigration provisions of the Compact by adding new restrictions and expressly applying the provisions of the INA to Compact nonimmigrants.<sup>28</sup> There are several new immigration provisions in the amended Compacts that differ from those contained in the original Compact (see table 3).

Table 3: Key Immigration Issues: A Comparison of the Original and Amended Compacts

Issue	Original Compact	Amended Compacts
Passports	Compact nonimmigrants do not need a passport to be admitted to the United States..	Compact nonimmigrants would need a valid passport in order to be admitted into the United States.
Entry into the United States for naturalized FSM and RMI citizens	Naturalized FSM and RMI citizens are eligible to apply for admission to the United States 5 years after they are naturalized, so long as they were a resident of the FSM or the RMI during that time..	Naturalized citizens would only be admissible if they are immediate relatives of a citizen of the FSM or the RMI or if they were naturalized before April 30, 2003.*
Entry into the United States for the purpose of adoption	A child who came to the United States for the purpose of adoption is not expressly prohibited from seeking admission into the United States under the Compact. However, the United States government has maintained that such children are not admissible under the Compact, but, rather, that they had to seek admission under general immigration requirements for adopted children..	A child who is coming to the United States for the purpose of adoption would not be admissible under the amended Compacts. Instead, these children would have to apply for admission to the United States under the general immigration requirements for adopted children. This provision would apply to any child who applied for admission to the United States on or after March 1, 2003.
Conditions on admission to the United States and its territories or possessions for Compact nonimmigrants	The United States has the authority to establish limitations, either in statutes or regulations, on a Compact nonimmigrant’s right to establish habitual residence in a territory or possession of the United States.**	The Attorney General would have the authority to issue regulations that specify the time and conditions of a Compact nonimmigrant’s admission into the United States.***

Source: GAO legal analysis of the original and amended Compacts.

Note: In addition, any of the authorities in the amended Compacts that the United States may exercise could also be exercised by the governments of the U.S. territories or possessions where the INA does not apply (i.e., the CNMI and American Samoa), so long as the exercise of such authority is lawful under the laws of that territory or possession.

\*Such naturalized citizens would also have to meet additional requirements, including residency requirements, unless they are an immediate relative of a citizen of the FSM or the RMI who is serving in the U.S. military.

\*\*The United States promulgated regulations in September 2000 regarding the rights and limitations of habitual residents in the territories and possessions of the United States. These regulations applied to Compact nonimmigrants in Guam, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. They did not apply to Compact nonimmigrants residing in the 50 states, the District of Columbia, American Samoa, or the CNMI.

\*\*\*The INA would now expressly apply to any Compact migrant who seeks admission or is admitted to the United States. As such, in addition to the Attorney General’s authority to promulgate regulations, any grounds of inadmissibility or deportability under the INA would now apply to Compact migrants except where the amended Compacts specify otherwise. Some modifications, however, were made to the INA provision, section 237(a)(5), allowing for deportation on the basis of an alien becoming a public charge.

<sup>27</sup>In the amended Compacts, DOD’s civic action teams have been eliminated. Both countries would now have access to humanitarian assistance programs that would emphasize health, education, and infrastructure projects that DOD would carry out.

<sup>28</sup>As noted in the Background section, FSM and RMI citizens who enter the United States are legally classified as “nonimmigrants”—that is, individuals who are in the United States temporarily as visitors, students, or workers.

In addition, the implementing legislation for the amended Compacts would provide \$15 million annually for U.S. locations that experience costs associated with Compact nonimmigrants. This amount would not be adjusted for inflation, would be in effect for fiscal years 2004 through 2023, and would total \$300 million. Allocation of these funds between locations such as Hawaii, Guam, and the CNMI would be based on the number of nonimmigrants in each location.

Mr. Chairman and Members of the Subcommittee, this completes my prepared statement. I would be happy to respond to any questions you or other Members of the Subcommittee may have at this time.

APPENDIX: ESTIMATED NEW U.S. AUTHORIZATIONS TO THE FSM AND THE RMI IN FISCAL YEAR 2004 U.S. DOLLARS

The estimated value of new congressional authorizations to the FSM and the RMI would be approximately \$3.8 billion from fiscal years 2004 to 2086 measured in fiscal year 2004 dollars (see table 4).

Table 4: Estimated New U.S. Authorizations for the FSM and the RMI, Fiscal Years 2004–2086

(Fiscal Year 2004 U.S. Dollars in Millions)

	FSM	RMI	Total
<b>Fiscal years 2004–2023</b>			
Grants for priority areas	\$1,323	\$572	<b>\$1,895</b>
Trust fund contributions	411	218	<b>628</b>
Payments for U.S. military use of Kwajalein Atoll land	Not applicable	144	<b>144</b>
Compact-authorized federal services	135	30	<b>165</b>
New U.S. authorization for 2004–2023	\$1,868	\$963	<b>\$2,832</b>
<b>Fiscal years 2024–2086</b>			
Grants to Kwajalein	Not applicable	\$306	<b>\$306</b>
Payments for U.S. military use of Kwajalein Atoll land	Not applicable	688	<b>688</b>
New U.S. authorization for 2024–2086	Not applicable	\$993	<b>\$993</b>
<b>Fiscal years 2004–2086, total new U.S. authorizations for the FSM and the RMI</b>	<b>\$1,868</b>	<b>\$1,956</b>	<b>\$3,825</b>

Source: GAO estimate based on the amended Compacts.

Note: Numbers may not sum due to rounding.

Mr. LEACH. Well, thank you very much, Ms. Westin, and let me stress that the oversight role of the GAO has been very impressive over the years on this subject. Let me also stress that the purpose of this oversight is to further the best interests of the people of the Compact countries, and that is the goal.

Secondly, let me say, Secretary Cohen, I thought your testimony was outstanding, and the emphasis is that the details are of minor significance compared to the underlying ties between the people of the Compact states and the United States, and this is a very appreciative and a very individual basis and in a general basis, and I think you captured the spirit of our relationship.

Mr. COHEN. Thank you.

Mr. LEACH. Mr. Short, I think you have done an outstanding job, and it would be my hope to move as propitiously as possible on all aspects of this Compact, and I think the country is in your debt.

I do have one query. You began your testimony with the observation that the Compact is now approved by the Administration and is being sent to the Congress, or is there any hesitation on that description?

Mr. SHORT. No hesitation, sir. The Compact Act has been approved by OMB and the Administration. It awaits signature of a transmittal letter to submit it to the Hill.

Mr. LEACH. And that is entirely.

Mr. SHORT. Yes, sir.

Mr. LEACH. That is very good news, and we are appreciative that that is the case prior to the committee meeting, and that is excellent.

Let me also say I just want to make everyone go on record regarding my impression that there is an assumption from both the departments, and from the GAO, that the GAO's recommendations on increased accountability are sufficient to meet the realistic concerns of all parties with regard to the integrity kinds of issues; is that correct, Mr. Short?

Mr. SHORT. Yes, sir.

Mr. LEACH. Secretary Cohen?

Mr. COHEN. Yes, I agree.

Mr. LEACH. And would you agree with that, Ms. Westin?

Ms. WESTIN. Yes, Mr. Chairman.

Mr. LEACH. Well, I think that is excellent news. Thank you.

Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

I have a different take on the situation with the renewal of the Compact, and I would like to direct this to Ms. Westin; I am curious, in terms of the GAO's calculations, why are we talking about 2086 when we have not even implemented the period of 2004 to 2023?

By throwing out such figures as \$6 billion here and \$7 billion there, it makes it sound as if these people are getting too much, or almost to imply that these people do not deserve such a tremendous amount. If this is the way that GAO makes these calculations, looking also in terms of the GAO statement here from 2024 to 2086, there are some estimates of about \$3 billion.

I am just trying to figure in terms of looking at monetary value versus human costs. Can you help me? Why we are talking about 2086 when we have not even gone through 2023?

Ms. WESTIN. Mr. Faleomavaega, it was not my intent at all to imply that this is too much money or too little money or exactly the right amount of money.

What we undertook was to do an analysis of the Compact that had been initialed by both countries, and we try to be careful to divide the amounts first through the first 20 years of the Compact, which is what you are talking about authorizing today to 2023, but also to give the Subcommittee some sense of what the rest of the negotiations had dealt with in extending use of Kwajalein to 2086, and that was our best estimate of what it would cost into the future.

Mr. FALEOMAVAEGA. Oh, I see. So the substance of your remarks about 2086 is in reference to the Kwajalein missile range facility?

Ms. WESTIN. Yes, because the grant assistance and the trust fund contributions for both countries end in 2023, so it was just the extension of the agreement for us to have use of Kwajalein that goes in stages as far as 2086.

Mr. FALEOMAVAEGA. We have a little complication with this, and maybe Mr. Short can help me.

I have a letter here from the Kwajalein Landowners Association, having some very, very serious concerns about how we are going about not only renewing the Compact, but what impact this will have on the landowners and how much they are supposed to be properly compensated for the use of their lands by the Federal Government, by our government at Kwajalein missile range.

Does this seem to imply that there is an entirely separate set of negotiations to deal with the Kwajalein landowners, separate and apart from what RMI is doing with this?

Mr. SHORT. Sir, let me outline the manner in which we deal with basically foreign military use anywhere in the world. And that is, first of all, we deal government to government, whether that is in Japan, Greece, Turkey or the Marshall Islands.

In this case, partly because of the unique history of Kwajalein, the Kwajalein landowners actually sat at the negotiating table with their government representatives through the whole process.

Mr. FALEOMAVAEGA. My time is going, Mr. Short, so what you are saying is that if there are any problems dealing with the landowners, they have to deal with the RMI government?

Mr. SHORT. Yes. We deal government to government, and we expect the government to work the issues with the landowners.

Mr. FALEOMAVAEGA. So whatever compensation that they get for the use of their lands, that's between the government of the Marshall Islands and the landowners?

Mr. SHORT. There is an earmarked amount of monies that is passed to the government of the Marshall Islands. There is a land use agreement in place which will have to be renegotiated between the landowners and the government that passes that money through.

Mr. FALEOMAVAEGA. One of the things that was brought to my attention by the Marshall Island leaders is that they are very, very concerned about the educational programs. As I understand from your statement, it is not part of the Compact renewal implementation.

Am I to get the impression that the Administration is not fully supporting the continuation of these educational Federal programs?

I notice that, for example, reference to the Pell Grants, RMI gets approximately \$2.7 million a year. Very, very important for the educational needs of the students from RMI attending universities in Hawaii and other parts of the country, and the funding ends in fiscal year 2004.

Do I get a commitment from the Administration that they will pursue with the Congress to support, continue supporting these programs?

Mr. SHORT. Sir, I would like to address the Federal programs.

As I pointed out in my testimony, there are certain activities and programs that are encompassed in the Compact. The education programs that you mentioned here and also the Congresswoman mentioned are outside the context of the Compact.

They are Federal programs that from time to time the U.S. Congress has granted authority to operate in the freely associated states. They are up for periodic renewal, and as you correctly point

out, some of the education programs recently have been eliminated or FAS access has been eliminated.

Mr. FALEOMAVEGA. But what I am seeking, Mr. Short, and my time is running short, I know that, will the Administration be committed to continue supporting these programs as the Congress will go through the process of reauthorization, especially the educational programs?

Mr. SHORT. Two points, sir. I cannot speak for the Administration with regard to individual programs. What I would ask is that a statement on policy regarding the relationship between certain Federal programs in the Compact be submitted for the record.

I provided this recently in response to a request by Senator Dominici, and I think that would help to clarify that issue.

Mr. FALEOMAVEGA. I am sorry. My time is up, Mr. Chairman. I will wait for the second round.

Mr. LEACH. Thank you very much.

Let me make two brief announcements. One, without objection, the statement of Mr. Gerald Zackios, the Prime Minister of the Republic of Marshall Islands will be placed in the record on this subject.

Secondly, we are going to have votes in the very near future on the Floor that are going to be very complicated, and this means that the time constraints are going to be greater.

Thirdly, I am going to have to step outside for just a minute. I have asked Mr. Weller to take the Chair while I step out, and it is Mr. Weller's turn to ask questions.

Mr. Weller.

Mr. WELLER [presiding]. Thank you, Mr. Chairman, and first thank the panel for the opportunity to talk with you today, and like my colleagues, I appreciate the special relationship we have with the Federated States of Micronesia and the Republic of the Marshall Islands, and I am hopeful we can move in a timely way to move this Compact agreement through the Congress, and complete this process to continue our commitment.

We have a long history with Micronesia and the Marshall Islands, and one of great friendship and long-time relationship going well back over a century for certainly in recent member. And although back in the forties and fifties the atmospheric testing of nuclear weapons, Mr. Faleomavaega, he and I have discussed this, and certainly while it seemed appropriate at the time, I am one of those who regrets that particular episode in our history.

I would like to ask those on our panel of the impact of the Compact, particularly on the economic opportunities for the people of these two countries. And you know, can you just share with us today what the primary sources of economic opportunity are for the people of Micronesia and the Marshall Islands today, and what you see as the future opportunities as we reduce the financial support from the United States to these two countries?

Mr. SHORT. I can address this. In the case of the Marshall Islands and the FSM, first of all, one area is tourism. While it is a bit remote from some of the other tourist destinations, there are opportunities to develop tourism, in some cases niche tourism.

Fisheries, the Marshalls and the FSM both license foreign fisheries to operate in their EEZ, and in the Marshall Islands there is

a fish plant, a tuna plant that processes landed tuna actually for further processing in American Samoa at the canneries.

There are other opportunities, limited agriculture. Black pearls, for example, are being developed in the Marshall Islands. There is no one industry or activity that I can see that will leap them toward self-sufficiency, but a lot of small activities that are appropriate to their remote location, and many revolve around tourism.

Mr. WELLER. And what level of private investment by American interest is occurring in these two countries?

Mr. SHORT. It is quite limited. I do not have the actual dollar figures, but we could provide them for the record.

Mr. WELLER. Would you, please? And what are the incentives? Are there any incentives in place as part of this Compact or provided by the two governments to attract American investors?

Mr. SHORT. The Compact itself does not provide incentives except for the trade and tax provisions. The individual governments have different programs for offshore investment.

Mr. WELLER. I certainly know one of the goals of this Compact is to advance fuller the opportunity for economic self-reliance. That information would be helpful.

Can you tell me what the impact on the standard of living in the FSM and RMI under the amended Compacts will have? Do you see any impact on the standard of living for citizens of these two countries?

Mr. SHORT. Well, as Ms. Westin indicated, over the 20-year period of grant assistance, the per capita will decrease from the present levels of about \$600 per capita to about \$300. This is in line with the trend, if you go back to the beginning of the Compact in 1987, where there has been decreased U.S. assistance as the economy develops, and as they develop local sources of revenue.

Mr. WELLER. And do you believe that economic growth will make up for this loss of contribution under the Compact?

Mr. SHORT. Yes, sir.

Mr. WELLER. Okay.

Ms. WATSON. Would you yield for a second, please?

Mr. WELLER. Actually, it is going to be your turn next.

Ms. WATSON. Oh, okay.

Mr. WELLER. I will recognize you if you will just give me another minute to finish my turn, then I will give you yours, Ms. Watson.

Ms. WATSON. Yes, I was just going to try to address some of your questions.

Mr. WELLER. Sure. As part of the new Compact you establish joint economic management committees which will oversee development planning, and Compact implementation.

How will we choose who sits on these panels? Mr. Cohen?

Mr. COHEN. Sure. We are in the process now of—we are engaging in interagency process to determine exactly how that will be accomplished. We are going to draft an Executive order which we hope the President will sign shortly after the legislation passes that will determine the composition of the U.S. delegation to these joint committees.

It is anticipated that the Departments of Interior and State, which have the strongest equities in this process, will be rep-

resented, and with a third member from elsewhere in the Federal Government.

Mr. WELLER. Okay, thank you, Mr. Cohen. That concludes my questions.

Ms. Watson.

Ms. WATSON. Thank you so much, Mr. Chairman, and to address some of your concerns, I think that you have put your finger on some of the questions that we need to probe.

I want to thank in particular, Mr. Short, for the work that you have done, and the fact that you have kept us updated. We certainly are appreciative.

And, Ms. Westin, it is good to see you again and to hear your report.

One of our concerns, and let me just kind of go down my mental list, was raised by Congressman Faleomavaega as to what we do in terms of the educational programs. Those of us who have been involved with Micronesia know that Pell Grants are the main support of the College of the Micronesia, and we do hope, Congressman, that we can continue those Pell Grants and the funding support for them.

And also Head Start is another one that is a cadillac of a program there in the FAS, and we do hope that we can negotiate here in Congress to keep those going.

In terms of economic development, that becomes a major concern because in the 15 years of the original Compact the growth economically was only 2.5 percent. I intend to take a codal down, and Congressman Faleomavaega and I have been talking about it for some time, we have to do it again, and Congressman Wexler, I hope that you can go with us as we look at the OPEC program that tends to go down and may help to train for entrepreneurship and small businesses, and we would like to encourage them to get involved with those programs so that they can have the kind of technical assistance to build their own capacity for developing their own economy. That has been very slow, and they are going to need the technical assistance.

I want to address the area of compliance monitors, if there is any need, and we have discussed this, Al, before, is there was any tremendous need in the U.S. Embassy is to have compliance monitors on the ground so they can do training as the Micronesian and the people in the RMI try to build more swift development of their economy.

We need to have people who are there, who are dedicated, and committed to providing the technical assistance as they move along.

I, too, was interested in accountability and who will comprise the management committee, and I did suggest to the GAO yesterday in my office that I think the American Ambassador located in the various Compact countries needs to sit on that management team, because that is the person in closest contact with the Compact negotiations and arrangements, and I think could offer greatly the input that is necessary.

So when we talk about state and interior and treasury, I would say you need to bring the Ambassador into that fold.

I had a question on increased staffing, and I think the compliance monitors are the number one required, essential persons to be on the ground. I understand that we are going to have six or seven in Hawaii, and they will kind of rid the circuit, but I do think the more we have stationed at the post the smoother this will go.

Mr. Chairman, I think we have a vote so I will just curtail my remarks for now.

Mr. LEACH. Thank you.

Ms. WATSON. Will we have an opportunity to come back?

Mr. LEACH. Yes.

Ms. WATSON. Okay.

Mr. LEACH. I expect we will recess and reconvene in a few minutes.

Ms. WATSON. Thank you.

Mr. LEACH. I have time for one more. Mr. Rohrabacher.

Ms. WATSON. Okay, thank you.

Mr. LEACH. Thank you, Ms. Watson.

Mr. ROHRABACHER. I would just like to ask a quick question. I am sorry that I had to leave. You know, when you are a Member of Congress you have got two or three things that you are supposed to do every minute of the day, and I was called out.

I would like to just ask about—I think that you can work the fundamental problems out in terms of the people problems and the organization structure to make sure that things are operating the way they should. And people who are working in good faith can work these things out, and I think that the people of the Marshall Islands are working with us, and the other island groups are working with us in good faith. And I think that we certainly are trying to operate with them in good faith.

But two things that go beyond that border are energy and water, and what are the prospects down there for energy and water? Do we have a—I am certain these must be costs that would be prohibitive to prosperity.

Mr. SHORT. Sir, with regard to energy, electrical energy is generated from imported oil almost entirely. There are some solar facilities, especially used in outer islands for phones and that sort of thing, but by and large it is imported oil.

Water is an issue especially in the low lying islands, such as Majuro and Kwajalein, where they are dependent on rainfall in many cases run off from runways or other catchments, and believe it or not, even though this is the tropics, droughts are a frequent occurrence.

Mr. ROHRABACHER. Maybe just a thought that maybe it would be good for us to look at a long-term vision and go to these basic needs and put capital investment in that would then permit the people of these islands to be somewhat independent and run their own affairs whereas they now have from an agreement with us these basic fundamentals in place.

Mr. COHEN. Congressman Rohrabacher, we do address that in our new funding mechanisms in the Compact. As I had mentioned, it is targeted into six high priority sectors. One of those sectors is public infrastructure. And in the case of the Marshall Islands, we require that 35 to 50 percent of the aggregate amount of the sector



grants go to public infrastructure, and that a certain percentage of that be set aside for maintenance.

Additionally, we require long-term and medium-term infrastructure plans so that we have a long-term vision that we use the annual Compact funding to support that. So we have addressed that.

We have recognized that the lack of adequate infrastructure is one of the barriers to economic development in these islands, and we are attempting to address that.

Mr. ROHRABACHER. Well, we have technology now. America has technology that can help in these areas, both energy and water, and it seems to me that is something we can do for the world and certainly do for our friends, and try to make these arrangements.

So thank you very much.

Mr. LEACH. Ms. Sherman, let me say I think we should break for a vote at this time. What we will do at this point, I apologize, we have at least two votes, and so we will have to break for those votes. And if you are able to stay, and I hope you are, we will resume in approximately 20 minutes, but we will resume as immediately after the votes as we can.

The Committee is in recess.

[Recess.]

Mr. LEACH. Well, thank you. The Committee will come back to order. It is formally the turn of several Members who are not back, but pending their return I am going to recognize Mr. Faleomavaega. Eni.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

Maybe I did not properly phrase my question, and I will try it again, but this time not with Mr. Short but with Mr. Cohen.

I realize that these programs are subject to renewal by the Congress, and the Congress does have that discretion to provide funding or make proper amendments to the law so the FSM and RMI continue to receive these funds, especially for educational programs.

I would like to ask Mr. Cohen, will we get the support of the Administration before the Congress to continue the funding of programs like Pell Grants, Head Start, Bilingual? That is what I am trying to get at.

Mr. COHEN. Sure, Congressman, I appreciate the question, and I am not able to say at this time, or I am not authorized at this time to speak on behalf of the Administration on that issue. I could make two observations that are relevant.

The first is that the State Department just issued a letter which Mr. Short referred to, which perhaps I can maybe describe some of the contents of. That, among other things, made it clear that when Mr. Short negotiated the Compact, including the new financial assistance provisions, in accordance with the authority that was approved across the Administration, that the grants were not sized so as to replace the Federal programs.

So, in other words, if any impression is out there that because the Compact will hopefully be passed soon, that it obviates the Federal programs, we have made it clear that one is not designed to replace the other. It is still, of course, the prerogative of Congress to decide which programs will continue, which will be terminated,

and which new ones might be added, but that is not the intention to replace.

Mr. FALEOMAVEGA. Yes, and I think this is where my concern lies, Mr. Secretary, knowing that the Department of the Interior is the administering agency. It would really help tremendously if we do get the support of the Administration for myself and Congresswoman Watson and others, those of us on the Hill who do support the continuation of these programs. I think if we get the support and endorsement of the Administration that these programs should be continued, that is half of the battle, if we get help from the Administration, in principle, to support them. That is where my concern lies.

But if we do not have the support of the Administration, then it is going to be even more difficult for us to justify these programs.

And I can say with some certainty that this first 15-year period, to say the least, has been most challenging for both the RMI and FSM. There have been a lot of problems, and I think we have to appreciate the fact that, as I may have mentioned in times before, Mr. Secretary, these people had no infrastructure. They had nothing to begin with.

And I know Ms. Westin knows where I am coming from, and my next concern is that we have to be careful in applying standards that are so high in terms of our expectations as a country given the fact that these people are 50 years behind in infrastructure development, health, education, anything of the sort, which is the reason why I think that my mentor, the late Congressman Phil Burton, was so insistent in doing the 10-year period of the Compact negotiations, that he insisted that these social, educational programs be part of the Compact, because we all knew that FSM and RMI simply did not have the resources nor even a nucleus of professional people, as we mentioned.

I know we have been floating this word accountability for the last 3 hours now, and I am to the point where it implies as if these people are not proficient. Or do I get the impression that these people have stolen money from Uncle Sam? Is this the reason of the lack of accountability? I mean, has anybody gone to jail for not properly using the funds?

There may have been misuse in terms of using it for the wrong programs, but were there any known embezzlements or somebody knowingly taking money for personal use? I am curious.

Mr. COHEN. Mr. Congressman, there have been a couple of examples, which I think Ambassador Watson is familiar with, but I would like to stress that by and large, as I read the GAO reports, the primary problems were not people stealing money; the primary problems were the ones that you identify, which is, you know, the continued development of the necessary capacity, and that is why one of our primary target areas under the new Compact is capacity development.

Your point is very well taken that, you know, we started really from ground zero—

Mr. FALEOMAVEGA. Yes.

Mr. COHEN [continuing]. In our history with these islands, and we are only starting from 1986, trying to develop all of the infrastructure and the public sector capacity, the economic development

that, you know, is necessary for these islands to become self-sufficient eventually. You know, we are not very far along in that process.

So we are trying to accelerate development, but we recognize that it is to nobody's shame that we are at the point where we are now.

Mr. FALEOMAVAEGA. What is the per capita income right now in Marshalls?

Mr. COHEN. You probably have more up-to-date figures.

Mr. SHORT. I believe the per capita in the FSM is about \$2,000 per year; in the Marshalls, about \$1,600.

Mr. FALEOMAVAEGA. Sixteen hundred?

Can you submit that for the record because I am curious? That is interesting.

I want to go back to Secretary Cohen's statement about these joint committees that are going to be established. I guess there is going to be proposed legislation to that effect after the Compact is signed and approved?

Mr. COHEN. Actually, Congressman, the establishment of the joint committees is provided for in the fiscal procedures agreements that are subsidiary to the Compact, so that is part of the package that you will be getting—

Mr. FALEOMAVAEGA. Okay.

Mr. COHEN [continuing]. Hopefully in the—

Mr. FALEOMAVAEGA. And I understand that the joint committee is going to be composed of three Americans and two Marshallese or three Americans and two FSM?

Mr. COHEN. That is correct, sir.

Mr. FALEOMAVAEGA. And this is going to be kind of like the super committee that is going to oversee all of the funding and usage, this committee will have the authority to cut funding if they feel that it is not being utilized?

Mr. COHEN. Yes. The accountability provisions assign different entities with different responsibilities. This is the overall committee that, number one, approves the allocations of the sector budgets.

Now, when I say approves the allocations, it is the prerogative of the Freely Associated States to propose their budgets, and the job of the committee is essentially to ensure that these budgets comply with the letter and the spirit of the Compact.

Mr. FALEOMAVAEGA. My time is up. I just want to say, Mr. Secretary, that this scares me. Maybe I am being simplistic in my outlook about the whole idea of accountability, but why can we not just have the inspector general's office of the Department of the Interior to do annual audits? They do it now?

Mr. COHEN. Yes.

Mr. FALEOMAVAEGA. And so what more accountability do we need? Take them to jail if they break the law or what? I am a little puzzled about this concept of administrative oversight or financial oversight. It touches on the question of sovereignty. It touches on the question of while you may be running a government you have got this super committee behind my back that is going to be telling me what to do and how to do things. Maybe I am getting the wrong message here, but I definitely will work with you on this issue.

Mr. COHEN. Thank you, sir. Can I respond to that?

Mr. FALEOMAVAEGA. Yes.

Mr. COHEN. The purpose of the joint committee is not to add an additional punitive element to the accountability process. In fact, this is a unique structure in that, well, number one, we are controlling only the Compact funds. We are not in any way controlling the local funds, and local funds have over the course of the original Compact gone from about a third of their national budget up to about a half, so you know, there is progress, and the progress will continue.

But the joint committee is a way for the U.S. to have a certain degree of control over its own funding, but we are bringing the Freely Associated States into that process as well.

And again, the job of the joint committee is not to usurp the prerogative of the Freely Associated States to set their priorities even with respect to Compact funds, but just to make sure that the letter and the spirit of the Compact is complied with. So we say health and education, for example, have to receive top priority.

If, for example, the proposed budgets for health and education were 1 percent and 1 percent, and then everything was in public sector capacity development, then it would be appropriate for the joint committee to step in and say that is not a proper allocation of funds. We have performance standards and measures. So you know, we need a joint committee like this to track progress and make sure that we are proceeding on target to achieve the objectives that we are trying to achieve.

So the joint committee is not intended in any way to infringe on the sovereignty of the Freely Associated States. It is a process where we can jointly work together to make sure that the Compact program is working.

Mr. LEACH. Well, thank you very much.

Ms. Watson, Ambassador.

Ms. WATSON. Thank you, Mr. Chairman.

If I am further maybe justify this management committee, I think it is very, very necessary because in the past the Department of Interior would just shunt the money out to the President of the FSM. That money could sit there. We have programs and we have programmatic provisions that needed to be addressed, and I found that money was sitting in a pot, and it was not going out to the educational facilities.

The GAO will come in and do an audit, but you have got a whole year that has gone by. The money has not been disbursed. We did not have textbooks in the schools.

And so I think with this management team it is not intended to be a block but intended to facilitate, at least that is my understanding, and that is what I would hope it would be, conformance to the specified provisions, particularly under the title II programs.

And I would like to have seen the islands further ahead. What happened was they did not have the technical capacity in many cases to move ahead, and you have to consider the framework in which these programs were implemented, and it is a tradition, customary framework. So somewhere in between there we have to use technical experience and capacity to assist the people there in the FSM to be able to address the requirements.

I was fearful that Pell Grants would be pulled back because there was lack of compliance. You have to have so many days, so many hours at school, and of course, under the judicial requirements if somebody dies, that is an automatic 4 days. Teachers just close down the schools and the colleges.

So I think with this team in place they could also assist in moving toward the goals of all these program. I think it will work out well, and I, too, may interested in who actually ends up as part of that team, and I am strongly suggesting that you allow the posted Ambassador to sit there too, because there is a lot of information day to day that he or she has that would be very effective in making decisions.

You know, one of the problems is is that when they veer so far off course they are not complying at all, and it is the responsibility of the Ambassador to close the programs down. We had to do that. And you know, money was expended. And I think with this management team there can be an intervention, and I had to say I am going to hold the keys to this program until you send somebody from the office, you know. And when you send somebody from the office, I will open the program back up, but we have got to stop it. It was bleeding to death our program. Money was being expended the wrong way.

So I think this management team can be very, very helpful to the people there, and to compliance with the provisions of our different programs. And we will follow it, and hope that we will know just how you are going to comprise it, who will sit there, and hope we can be helpful.

Mr. COHEN. Sure. And may I make a point on that, Mr. Chairman?

Regardless of who actually sits on the U.S. delegation to these joint committees, we are going to have a larger team that is going to include the Ambassador. The Ambassador is clearly an essential figure in this whole process, unavoidably.

Ms. WATSON. Yes.

Mr. COHEN. I mean, the Ambassador, for example, as you know has control over the people that come and go from the U.S. side, so our monitoring teams are going to have to work with the Ambassador.

The Executive order is going to create an interagency group that will be very representative of the important agencies in the Federal Government.

We are currently operating with an interagency group that is established under the authority of, I believe, the National Security Council through the State Department, and we are going to replace that with one hopefully established by Executive order.

So, you know, the U.S. input and the U.S. team is going to be very represented and broadly based, and that is really going to be more important than the three people who are actually sitting on the committee.

Ms. WATSON. Just one more question. I understand that we might lose FEMA. In fact, I think FEMA is pulling out of Micronesia. Is FEMA pulling out of the RMI and Palau as well?

Mr. SHORT. Yes, ma'am. The disaster response capability that is provided in the amended Compact will provide the Office of Foreign

Disaster Assistance of USAID as the instrument of the U.S. Government that responds to disasters.

Ms. WATSON. Let me query that a bit. Are they set up to move like FEMA does now?

I know FEMA will move on an emergency immediately. They are like the Red Cross. And they will come in, they will set up posts, and they will bring in provisions, and there are loans and so on.

I am not sure the working of USAID emergency response, if they can move—you know, they have this bulky overhead, and not only out here in the Pacific but in Africa and every place, and lots of money goes to that overhead cost whereas FEMA deals with direct aid and assistance.

So I am just wondering if they have the capacity to have that extensive response that FEMA does.

Mr. FALEOMAVAEGA. Will the gentlelady yield? I can address that.

Mr. SHORT. The Office of Foreign Disaster Assistance is the normal mechanism that the United States Government uses in overseas areas to respond. It has been operating in Palau since their Compact was implemented. It provides all of the features of FEMA with one exception, and that is, as you pointed out, with regard not only to response but to recovery, and that is with regard to capital infrastructure replacement. They do not have a program as does FEMA, for a matching program in that area.

Mr. FALEOMAVAEGA. I was just asking the lady—

Ms. WATSON. Yes, I will yield.

Mr. FALEOMAVAEGA. Is this one of the initiatives of the Administration not to have FEMA as part of the program to assist RMI and FSM?

Mr. SHORT. Well, it is to substitute the Office for Foreign Disaster Assistance in USAID for FEMA.

Mr. FALEOMAVAEGA. My impression is that the disaster foreign assistance is other than just giving monetary compensation, but not to the extent of FEMA. When something happens, and in a way that is declared by the President as a national disaster, FEMA, in its operative and the Red Cross and everybody do come and help. But through the program of the State Department, they do not help at all. All they give us is some monetary compensation that could be given as a gift to those countries, and that is where my concern lies.

I just feel that FEMA is in a better position to give assistance, especially where they are subject so often to typhoons and cyclones. I just feel that these people deserve that kind of assistance.

Thank you. I thank the gentlelady.

Ms. WATSON. I just want to say that is a big concern of mine too. I do not think that USAID, Office of Emergency Assistance, can take the place of FEMA because these islands at sea level are prone to rainstorms, floods, you know, homes slipping into the ocean, and all kinds of other natural disasters. I just think that the competition with other areas of the world under that program might just squeeze these little, tiny islands out. So this is something that we are going to want to follow up on too, and maybe a letter from Disaster Assistance, and Members of the House that

are concerned about this issue might help in restoring that program.

Is this written into the Compact, Mr. Short, that FEMA would be replaced? Is that part of the Compact?

Mr. SHORT. We have a subsidiary agreement on disaster response, and the Office of Foreign Disaster Assistance is in that agreement.

Ms. WATSON. Well, why do we not do this, and this is directed to the Chair, that we state our concerns, and see if we can negotiate this area of it. It is going to be a budgetary item, I am sure, and we might see if we can intervene on it because leaving these islands without FEMA is a disaster waiting to happen.

Mr. LEACH. Well, I appreciate your concerns. I am not sure that we have the capacity to negotiate with the Executive Branch, but I think these are very real concerns to express to the Executive Branch.

Ms. WATSON. Yes, we can send a letter anyway.

Mr. LEACH. Mrs. Bordallo.

Ms. BORDALLO. Thank you very much, Mr. Chairman, and again, thank you for the courtesies extended to me today to sit on this Committee and listen to the testimony.

My first question is to Secretary Cohen. According to the GAO Compact impact in Guam, Hawaii and the CNMI in 2000 totaled \$58.2 million, with Guam's share being \$31.5 million.

Why has Interior limited base Compact-impact payments to 15 million?

And I might add, Mr. Chairman, and to those present, that this 15 million is divided three ways, between CNMI, Hawaii and Guam.

And the second part of the question is, how costly can we expect the migrant census required under Interior's proposal? And how often will these censuses have to be conducted? Why does Interior not use available data such as the number of enrolled school children as the basis for allocating funds?

The reason I am asking about this, Mr. Cohen, is because this again, this cost for this census will come out of the 15 million, leaving us short again, and so I just wondered if you could answer those two questions.

Mr. COHEN. Certainly, Congresswoman. Maybe if I can answer the second question first.

We estimate that the censusing cost would be about 1 percent of the total amount on average. Actually, it might be less than that now because the version of the legislation that is going to be before you shortly requires censusing at least every 5 years, so that should cut down on the cost of performing these censuses, and the intention, of course, is to get an accurate count of, you know, how many migrants are in each jurisdiction impacting not only public schools, but also, you know, medical services, and law enforcement, and other public services. So that is the intention.

Our hope is that the census dollar amounts are not excessive and do not significantly impact on the amount available for the jurisdictions.

With regard to the adequacy of the impact payments, I would first point out that the Administration proposal is significantly in

excess of any amounts that Congress has ever authorized for Compact impact. The original Compact Act authorized impact payments in such amounts as Congress would determine from time to time.

So what the Administration is proposing as a mandatory permanent appropriation for the entire life of this program is significantly in excess of anything that has ever been appropriated before. It is an amount below which the—you know, if the legislation is passed as presented, it is an amount below which we will not decrease over the life of the program.

I would also point out that no attempt has ever been made, in our view, to give a balanced account of the effect of migration to the Pacific jurisdictions. In fact, the methodologies that we have used before created, in our view, a perverse incentive to focus only on the negative.

In Guam, Guam, I know full well, is suffering a very severe fiscal crisis, and the impact of migrants in Guam is considerable, but, you know, I have been through this debate before as a resident of California, the effect of illegal immigration and all of that. We know that the migrants have a positive impact as well as a negative impact, and we are aware of no study that has been done to date that has tried to present a balanced view.

We think, for example, that in addition to the positive impact that migrants have had not only in the Pacific territories but also in flourishing communities like the Marshallese community in Arkansas and also in Oklahoma. They make positive impacts such as providing a ready supply of labor often for jobs that locals are not willing to take. You know, they provide tax revenue. They create economic activity. So the story overall is not completely negative.

We wanted to get out of the business of giving the territories an incentive to focus only on the negative in their estimates every year.

Also, I would point out that by sending approximately \$3.5 billion out to the region over a 20-year period, we are hoping to have a positive economic impact on places like Guam and Hawaii. You know, we are going to need contractors to do the work. A lot of that work by virtue of location should go to Guam-based businesses, Hawaii-based businesses, so we are hoping that there are positive impacts as well.

The Federal Government, you know, fortunately or unfortunately, does not always fully compensate all of its states and territories for the full impact of policies that it undertakes. For example, you know, my home state of California does not fully—is not fully compensated for immigration that occurs over the border, which is arguably, you know, a Federal responsibility.

So it is something that, you know, Guam has been asked to shoulder in a very difficult time, but this is the proposal that we have had, and we think the \$3 million over 20 years is the best proposal that the Executive Branch has ever made, and we look forward to working with Congress on the issue.

Ms. BORDALLO. Thank you. Thank you, Mr. Secretary. And certainly I share your views.

You know, we are all one family out in the Pacific there, and certainly Guam wants to provide all the services just like they would



to anyone else. However, it has been a real burden on our government.

Now, we have come up with some solutions. I recently have a proposal here, and I have a letter that has been addressed to you, and I was wondering when can we anticipate a response to the joint letter?

This letter is signed by the governor of Guam, myself and the speaker of the Guam legislature, and it has to do with Compact-impact, and other ways that we may be able to obtain funding in the areas where we are impacted, such as education, health, justice department. So I am sure you have that letter.

Can we anticipate a response soon to that?

Mr. COHEN. Yes, ma'am. In fact, I signed the response yesterday, so it should be——

Ms. BORDALLO. Oh, very good.

Mr. COHEN. So it should be going out any time, and I am happy to share with you the contents.

As you know, and as a representative of the Administration, I cannot take a personal position on any piece of legislation that goes through. As you know, the interagency process is controlled by OMB. So I cannot say that, you know, my office supports that idea or does not.

But I do appreciate the opportunity that you have given me to discuss this, and of course, we discussed it with the Secretary of the Interior herself if you recall a couple of months ago, and I think it is a very creative approach to the problem, and it addresses the specific issues that are raised by migration in a way that I thought was very creative, and I guess that is as far as I can go at this point.

Ms. BORDALLO. Well, thank you. That is good enough, Mr. Secretary.

And Mr. Chairman, I would like to have this letter entered into the record if I could.

Mr. LEACH. Without objection.

Ms. BORDALLO. Yes, and I have one more short question, and this is for Mr. Short.

Is there any change in the Compact amendments to the use of DoD medical facilities? If FAS citizens cannot use DoD facilities in Hawaii and Guam, how will these costs be recovered in the Compact-impact formula?

Mr. SHORT. There are no provisions in the Compact Act for direct DoD use without referrals. There are provisions, as there are now, where the government of the Marshalls or the government of the FSM can refer personnel to U.S. medical facilities to include the one at Kwajalein on a referral basis, and then they are obliged to make payment.

Ms. BORDALLO. I see. Because my experience in serving as Lieutenant Governor of Guam, our military hospital there absolutely will not take citizens from Micronesia regardless of referrals as far as I know.

However, I do know that in Hawaii they do accept the patients, and I think I have brought this up with Mr. Cohen as well.

So I just wondered why the regulation requirements are different.

Mr. SHORT. I think the important point here is that they have to be referred, and also the military facility has to have the capacity to treat those individuals.

Ms. BORDALLO. Thank you very much. Thank you, Mr. Chairman.

Mr. LEACH. Well, I thank you all, and let me thank the panel. Yes, excuse me. Mr. Faleomavaega.

Mr. FALEOMAVAEGA. One short.

Mr. LEACH. One short question, yes, sir.

Mr. FALEOMAVAEGA. I just want, Mr. Short, for the record, about the tuna issue. For purposes of clarification if we have got the percentage properly in place so that there is no misunderstanding. So that my industry does not go kaput as a result of this oversight, can I ask Mr. Short to clarify exactly what is in the provision now in the proposed Compact?

Mr. SHORT. Yes, sir. You are referring here to the tax and trade provision, specifically the tuna allocation. That allocation is unchanged from the previous Compact, i.e., 10 percent.

We are in receipt of your letter and we will be responding to that letter promptly.

Mr. FALEOMAVAEGA. A combined 10 percent for both FSM——

Mr. SHORT. Yes, sir.

Mr. FALEOMAVAEGA [continuing]. And RMI?

Mr. SHORT. That is correct.

Mr. FALEOMAVAEGA. That is how the Compact is going to be written.

Mr. SHORT. No change in the previous Compact arrangement.

Mr. FALEOMAVAEGA. I thank the gentleman. Thank you, Mr. Chairman.

Mr. LEACH. Thank you, Mr. Faleomavaega.

Thank you all, and I would only stress that the Committee wants to work forthrightly to get this approved. We seek to bring as much certainty and stability as possible to a situation where the United States feels very strongly about this region, and the American people feel very close to the peoples of this region, and we have a warm and wonderful relationship, and we want it deepened and strengthened.

Thank you all very much.

[Whereupon, at 3:58 p.m., the Subcommittee was adjourned.]

## A P P E N D I X

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### MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE NICK SMITH, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF MICHIGAN

Chairman Leach, thank you for this opportunity today to visit the Subcommittee on Asia and the Pacific with an issue that affects not only a constituent of mine from Whitmore Lake, Michigan, but more importantly the rule of law in the Federated States of Micronesia and investor confidence in FSM institutions. Mr. Short, Mr. Cohen, Ms. Westin, thank you for coming today to brief us and answer questions on the Compacts of Free Association recently renegotiated between the United States and the Micronesian and Marshall Islands.

The issue as relayed to me by my constituent, Mr. Danny Barrett, is that he obtained a judgment from the Supreme Court of the Federated States of Micronesia in the amount of \$16,000+ for contract benefits owed him by the State of Chuuk. This judgment was issued in 1993, but the State has still refused to pay. I have a letter here from 2001 as well, from the Acting Director of the Office of Insular Affairs in the Department of the Interior to the Governor of the State of Chuuk urging payment as dictated by the Supreme Court Finding. But this issue has still not been addressed.

Sixteen thousand dollars is a lot of money to my constituent, but even more importantly, its loss discourages American citizens from doing business with member states of the FSM and raises some fundamental questions about prospects for economic investment. Furthermore, if these are judgments determined in legitimate federal and state FSM courts, the continued refusal of the State of Chuuk or any other state to comply raises serious questions about the rule of law.

It should be noted that in the Senate report accompanying the FY2000 Department of the Interior Appropriations bill, the committee notes "that for numerous years Chuuk State of the Federated States of Micronesia has been seriously delinquent in satisfying various judgment debts against Chuuk."

It states further, "To ensure compliance with payment plans entered into between Chuuk and its creditors, the Committee directs the Department to withhold all appropriated funds that would otherwise be available for FSM, unless the Department certifies that Chuuk is in full compliance with any known payment plans. This restriction is not limited to pass through funding to Chuuk."

Obviously, this has been an ongoing problem.

I'd like to submit these documents for inclusion in the record.

I thank you for your assistance and I appreciate your insight. Thank you, Mr. Chairman, and I yield back the balance of my time.

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LETTER SUBMITTED FOR THE RECORD BY THE HONORABLE NICK SMITH, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

DANNY P. BARRETT,  
WHITMORE LAKE, MI,  
*April 30, 2003.*

Hon. NICK SMITH,  
*Committee on International Relations,*  
*House of Representatives, Washington, DC.*

DEAR CONGRESSMAN SMITH: I would like to take this opportunity to mention a matter that will soon be brought to your attention: the proposed Compact of Free

Association between the United States and the Federated States of Micronesia. The Compact will be voted on by Congress.

A deficiency in the proposed Compact impacts me directly, and will victimize other Americans in the future, unless corrected by Congress.

The United States has been in negotiations with the Federated States of Micronesia to renew the Compact. Of interest to me is the fact that the US is planning to continue to give the FSM millions of dollars a year, when that same country will not honor a judgment owed me that was issued by its own courts.

I am a veteran of both the Vietnam War and the Gulf War. I left the military after the

Gulf War, and soon thereafter accepted a position with the State of Chuuk. To cut to the end of the story, I obtained a judgment in the FSM Supreme Court, (stipulated to the state government), in the amount of \$16, 185 for contract benefits due but unpaid. However, in the State of Chuuk only judgment creditors with local political sway are paid. This means that I (as well as most other Americans) do not get paid.

Efforts have been made to collect this judgment through court hearings, but obviously to no avail. The FSM courts have been made toothless in this regard.

The degree to which the State of Chuuk ignores debts owed to Americans is so great a problem that the Senate Report (Report 106-99) accompanying Bill S. 1292 for the Department of the Interior and Related Agencies Bill, 2000 stated on page 57 that "the Committee directs the Department to withhold all appropriated funds that would otherwise be available for FSM, unless the Department certifies that Chuuk is in full compliance with any known payment plans. This restriction is not limited to pass through funding to Chuuk. It shall apply to any fiscal year 2000 appropriations for the FSM and to funds available to the Department through previously approved standing or permanent appropriations for the FSM with the exception that this restriction does

not apply to obligations that are entitled to the full faith and credit of the United States under the Compact of Free Association."

Such a restriction is consistent with the spirit of 22 U.S.C. § 2370, which prevents foreign countries from receiving foreign aid pursuant to Chapter 32 of Title 22 if such countries "are indebted to any United States citizen or person for goods or services furnished or ordered" where such "person has exhausted all legal remedies."

These congressional directives are of no apparent concern to the politicians in the FSM. On February 21, 2001, Acting Director Pula of the Office of Insular Affairs wrote Governor Walter of Chuuk regarding this specific judgment. As far as I know, the Governor did not even give the letter the dignity of a response, which is the same non-response that my lawyer has received to letters to successive Chuuk State Directors of Finance. This matter has also been brought to the personal attention of FSM Ambassador Marehalau. Again, no response.

The state of Chuuk remains smug enough about the non-collectability of these American debts that they do nothing even during the negotiations for a renewal of the Compact, and American negotiators did not press them on it. Since those negotiations were not concluded by the end of the fifteenth year of the Compact—that is, November 3, 2001—the Compact allows for an additional period of negotiations. The Compact stipulates that the US "shall continue its assistance . . . at a level which is the average of the amounts granted." In other words, the FSM as a whole, which was receiving \$80 million in US assistance this past year, can expect to receive \$97 million annually during the next two years. This means an increase of over \$34 million over the two-year extension period.

This money will be in addition to the \$2 billion the U.S. has given to FSM over the past fifteen years which has been largely wasted by the politicians, while thousands of Micronesians are leaving for Guam and Hawaii, thereby overloading the school and medical systems there.

Apparently the politicians of the State of Chuuk are going to continue to be supported by U.S. tax dollars while Americans have uncollectable judgments issued by FSM courts. This cannot be right, and I and other American citizens and companies need your Intervention to assist Director Pula of the Office of Insular Affairs and others who are concerned about this issue.

As earlier noted, the problem is not just mine. It is critical for future investment by American firms in that country. If judgments of the courts are worthless, how can American investment be expected?

The solution is a simple one. A Compact amendment needs to be made by Congress that provides that any American citizen who submits to the Office of Insular Affairs, United States Department of the Interior, an attested copy of a judgment of a state or national court of the Federated States of Micronesia that is at least two years old, and by affidavit states that (a) the affiant is an American citizen and

is the judgment creditor of that judgment; (b) that the defendant is a state of the Federated States of Micronesia, or the national government of the Federated States of Micronesia, or an agency of one or both governments; and (c) that the judgment remains unpaid in whole or part. Upon receipt of such documentation, the Office of Insular Affairs shall notify the identified defendant of the judgment and related documents submitted, and allow the defendant a period of 90 days to prove that the judgment has been submitted, the Department of Interior shall withhold funding for the government involved in sufficient amounts to pay both principal and interest of the specified judgment, and shall pay that sum as directed by the judgment holder.

Unless such an enforcement mechanism is in place, judgments held by American citizens will continue to be ignored.

My judgment was only for \$16,000+. That is a lot of money to me, but not to the Chuuk government. Right now, Jack Fritz, the longtime Speaker of the National Congress and one of the Chuuk representatives, recently pled not guilty for allegedly stealing more than that. His trial will be set for later this year.

Please support passage of such an amendment, which is in the interests of American trying to do business in the FSM, as well as an encouragement for needed American investment in those islands to stem the flow of islanders leaving to look for jobs in the United States.

Sincerely,

DANNY P. BARRETT.

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LETTER TO GOVERNOR ANSITO WALTER, STATE OF CHUUK, CHUUK, FM, FROM THE UNITED STATES DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY, DATED FEBRUARY 27, 2001 SUBMITTED FOR THE RECORD BY THE HONORABLE NICK SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

UNITED STATES DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
*Washington, DC, February 27, 2001.*

Hon. ANSITO WALTER, *Governor,*  
*State of Chuuk,*  
*Chuuk, FM.*

DEAR GOVERNOR WALKER: My office has received letters from Palau Supreme Court Associate Justice Barrie Michelsen, formally a private attorney in the FSM, regarding collection of a judgement owed an American citizen. A copy of the judgment is attached. For many years Attorney Michelsen and his client have unsuccessfully attempted to collect on this judgement.

Your administration has taken a number of steps to restore Chuuk State's credibility by paying its accumulated debts. Because of your efforts, this office to date has assured the United States Senate Committee on Appropriations, which addressed the issue in a committee report, that creditors have been satisfied. The Senate remains concerned with this issue, and the subject will clearly have currency as new compact funding is considered in Congress.

Justice Michelsen's complaints must be taken seriously. I will appreciate it if you would investigate this outstanding judgement and direct that appropriate actions are taken to satisfy it.

Sincerely,

NIKOLAO PULA, *Acting Director,*  
*Office of Insular Affairs.*

Cc: Associate Justice Barrie Michelsen  
Ambassador Jesse Marehalau  
Allen Stayman, Director OCN

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COPY OF JUDGMENT, DANNY P. BARRETT V. STATE OF CHUUK, SUBMITTED FOR THE  
RECORD BY THE HONORABLE NICK SMITH, A REPRESENTATIVE IN CONGRESS FROM  
THE STATE OF MICHIGAN

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DATE 11-24-93

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CLERK, FSM SUPREME COURT

**TRUK**

TRIAL DIVISION

IN THE SUPREME COURT

FEDERATED STATE OF MICRONESIA

TRIAL DIVISION - STATE OF CHUUK

DANNY P. BARRETT	)	CIV. ACTION 93-1009
	)	
	)	
	)	
PLAINTIFF	)	JUDGMENT
v.	)	
	)	
STATE OF CHUUK	)	
	)	
DEFENDANT	)	

An offer of judgment and acceptance thereof having been filed,  
judgment is hereby entered on behalf of the Plaintiff in the amount of \$16,185,  
with the condition that if judgment is satisfied within 90 days of the entry of  
judgment that Plaintiff has waived post-judgment interest. If judgment is not paid  
within the said 90 day period, post-judgment interest will accrue from the date of  
entry of judgment.

Dated: Nov 24, 1993

*Palma A. Otto*

Office of Clerk of Court  
FSM Supreme Court

I HEREBY CERTIFY that this is a full, true and correct copy  
of the original on file in the Office of the Clerk of Court, FSM  
Supreme Court, Moen, Chuuk 96942.

DATED this 24 day of January, 19 2000

*Palma A. Otto*

Clerk of Court

PREPARED STATEMENT OF THE HONORABLE MADELEINE Z. BORDALLO, A  
REPRESENTATIVE IN CONGRESS FROM GUAM

Mr. Chairman: Thank you for allowing me to participate in this hearing. I would like to commend you and Ranking Member Faleomavaega for your leadership on issues affecting the Asia Pacific region, and for your interest in the Compacts of Free Association between the United States and the Federated States of Micronesia and the Republic of the Marshall Islands.

I strongly support the renewal of the Compact agreements and the continued economic assistance to the Compact States. Guam is the closest neighbor to the Federated States of Micronesia and the Republic of Palau, and we have seen the progress that the Freely Associated States (FAS) have made under their respective Compact agreements. As we review the record of accomplishments under the fifteen year agreement, we should also weigh the issues and concerns that have been raised regarding economic and social development.

One of the major concerns for Guam is the reimbursement of costs incurred by Guam due to the Compact. I understand that the agreements that have been negotiated by the State Department may address some of the issues regarding passport requirements for FAS citizens, but the unrestricted migration provisions may be unchanged. The Government of Guam has incurred significant costs over the past seventeen years due to this migration, and we have been inadequately reimbursed by the federal government. The immigration policy should go hand in hand with an adequate reimbursement policy for Compact-impact costs.

I have other concerns regarding the changes that the Administration may propose and I would seek clarification on how these changes would improve the economic viability of the Freely Associated States. I am concerned about proposed changes to participation in disaster relief programs under the Stafford Act, and on changes to participation in other federal grant programs. Will these changes contribute to the future well being of the Compact States, or are these changes driven by budget constraints? Is there an overall policy which defines which federal programs are appropriate for the Compact States, or is this an issue that is defined on a program by program basis? As the Congressional review process goes forward, I hope these concerns would be addressed.

Finally, I am interested in how Compact assistance will be administered and whether new measures intended to increase accountability will work. Guam's experience with the Compact-impact issue is a warning that we have to be on guard against the law of unintended consequences because it may be very difficult to foresee how policies made in Washington work in the islands. If experience is the guide, then Guam's experience has been that Compact issues are nearly impossible to revisit if we do not get this right the first time.

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PREPARED STATEMENT OF RICHARD LAWLESS, DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR ASIAN AND PACIFIC AFFAIRS, OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE FOR INTERNATIONAL SECURITY

Mr. Chairman, the Department of Defense has a deep appreciation of the significance of our relationship with the Freely Associated States (FAS)—the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau. This appreciation has deep roots, as we remember those brave American servicemen who gave their lives to liberate these islands during World War II. During the Cold War, these islands and peoples also played a critical role in the development of crucial US defense programs in the 1950s and 1960s. Even now, FAS citizens are playing an important role in the development of U.S. missile defenses which will guard the U.S. and its friends and allies in the decades to come. Moreover, FAS citizens are also involved in the war on terrorism and in the liberation of Iraq, serving alongside American servicemen and women in the U.S. armed forces.

DEFENSE RELATIONSHIP WITH THE FAS

Let me briefly describe our relationship with the FAS and the unique U.S. defense responsibilities to these sovereign nations under the terms of the Compact of Free Association. The Compact, and its subsidiary agreements, obliges the United States to provide for the defense of the Freely Associated States in perpetuity, unless there is mutual agreement to terminate the arrangement. We are committed to defending and providing for the security of these nations and their peoples "as the United States and its citizens are defended." This is an obligation greater than the United States has assumed under any of its mutual defense treaties. In return, the United

States has the right for certain military uses and access, as well as the right to deny access to third countries.

In the absence of the Compact or, more specifically, the Security and Defense Relations Title of the Compact, the Mutual Security Agreement (MSA) still provides for the U.S. defense obligations, U.S. military access, and the denial of military access by third countries. The MSA is indefinite in duration and remains in force until terminated or amended by mutual agreement. The so-called “defense veto” and provisions regarding future base rights, however, are scheduled to terminate with the expiration of the Security and Defense Relations Title of the Compact no later than 30 September 2003 unless this Title is extended. It is in the best interests of the United States to maintain the full range of military access and security engagement options that the Compact provides.

In addition, U.S. rights for access and operations on Kwajalein Atoll were negotiated under the Military Use and Operating Rights Agreement (MUORA) pursuant to, but separate from, the Compact. The MUORA had an original term of 15 years that was due to expire in 2001. Given the importance of the agreement, the U.S. opted in 1999 to extend the MUORA for an additional term of 15 years to 2016.

When it became clear in 2002 that the Government of the Marshall Islands was interested in concluding a long-term extension to the MUORA, the U.S. decided to take the opportunity to secure needed access beyond 2016. The U.S. and the Marshall Islands have since negotiated an extended MUORA which will provide us with continued access to the Kwajalein Atoll defense sites until at least 2066, and possibly to 2086 at the U.S.’ option. It is important to note that, because the Department of Defense was unable to project our specific requirements for Kwajalein Atoll beyond the mid-2020’s, this long-term extension to the MUORA was negotiated with a flexible early termination clause. Under this clause, the DoD can terminate the MUORA as early as 2024 with seven years advance notice. The DoD believes that this clause is a prudent measure that provides us with the necessary flexibility to enter into an 70-year extended term agreement when the specific longer-term uses are not clearly known.

While the Kwajalein lease could have been extended under the MUORA separate from Compact negotiations, the two are nevertheless inextricably linked. The daily routine at the Kwajalein Missile Range and the facilities on Kwajalein Atoll depends upon a favorable working relationship with the people of the Marshall Islands. Provisions of the Compact help provide the basis for U.S. support to the Marshallese people who also provide much of the labor force at Kwajalein. The Compact therefore contributes to a positive local attitude towards Kwajalein.

The primary goal of the Compact and the assistance provided under it is to maintain a unique relationship with the Freely Associated States while helping them to become economically self-sufficient. Continued Compact assistance will nevertheless help to preserve key defense interests while denying access to potentially hostile forces. Continuing the Compact is in the best interest of the United States and the Freely Associated States. It will help the Freely Associated States continue to work toward their national goals, while serving our national security interests.

#### STUDY OF DEFENSE INTERESTS IN THE FAS

In 1999, in preparation for the Compact of Free Association renewal, the Department of Defense conducted a study to determine our defense interests in the Freely Associated States for the post-2001 era. The study looked at issues such as the need for continued access, current and future threats, and roles that the Freely Associated States might play in future scenarios. The study found an important defense interest in continuing the use of the Kwajalein Missile Range and the facilities on Kwajalein Atoll. The requirements of our missile defense and space surveillance programs, combined with the uniqueness of Kwajalein’s location, and infrastructure investment make renewal of the Compact in the best interest of the Department of Defense.

The strategic environment that surrounded the study has changed greatly over the past four years, but these changes only reinforce the importance of U.S. access to and use of the Kwajalein Missile Range.

#### QUADRENNIAL DEFENSE REVIEW

The 2001 Department of Defense Quadrennial Defense Review (QDR) recognized that the world has changed and that America must prepare for a wide array of threats to our security at home and abroad. As witnessed by the terrorist attacks of September 11th, the future security environment will be marked by uncertainty. The QDR’s assessment of the global security environment acknowledges a great deal of uncertainty about the potential sources of military threats, the conduct of war



in the future, and the form that the threats and attacks against the U.S. will take. While contending with such uncertainty is a key challenge for U.S. defense planning, certain features and trends of the security environment define not only today's geopolitical and military-technical challenges but also highlight critical operational challenges that the nation's armed forces will need to master in the future. Maintaining the Compact will support our efforts to confront these future challenges by providing us with the right for military use and access and with the right of strategic denial.

The QDR identifies Asia as a region that is gradually emerging as an area susceptible to large-scale military competition. It also identifies an "arc of instability" stretching from the Middle East to Northeast Asia containing a volatile mix of rising and declining regional powers where the governments may be vulnerable to overthrow by radical or extremist internal forces or movements. Many of these states also field large militaries and possess the potential to develop or acquire weapons of mass destruction. The QDR sees a possibility that a military competitor to the U.S. with a formidable resource base may emerge in the region.

Distances in the Asian theater are vast, and the density of U.S. basing and en route infrastructure is lower than in other critical regions. The U.S. has less assurance of access to facilities in the Asia-Pacific region than in other critical regions of the world. The QDR therefore identifies the necessity of securing additional access and infrastructure agreements and developing military systems capable of sustained operations at great distances with minimal theater-based support.

When Secretary Rumsfeld came into office, the President charged him with evaluating U.S. military posture in the world, and the QDR calls for a reorientation of our posture in Asia. The U.S. will continue to meet its commitments around the world, including in Southwest and Northeast Asia, by maintaining the ability to defeat aggression in two critical areas in overlapping timeframes. As this strategy and force planning approach is implemented, the U.S. will strengthen its forward deterrent posture. Over time, U.S. forces will be tailored to maintain favorable regional balances in concert with U.S. allies and friends with the aim of swiftly defeating attacks with only modest reinforcement. A key objective of U.S. transformation efforts will be to increase the capability of its forward forces, thereby improving their deterrent effect and possibly allowing for reallocation of forces now dedicated to reinforcement of other missions.

Inevitably, our ability and flexibility with regard to deploying forces forward will depend on access, which the Compact provides. While it is too soon to say whether the FAS will be considered as candidates for increased U.S. access or basing in the region that the QDR calls for, the fact remains that our rights under the Compact provides for this possibility. In this region of instability and potential conflict, the U.S. right of strategic denial under the Compact, whereby the U.S. can deny third countries access to the FAS, is also significant. Strategic denial effectively creates a stable and secure zone across a broad swath of the Western Pacific. It is reassuring to the Department of Defense in this period of uncertainty to have this stable region in the mid-Pacific in which we can deny access rights to any potentially hostile third country.

#### MISSILE DEFENSE

Another important change since the 1999 study was the December 2001 announcement by President Bush that the United States would withdraw from the Anti-Ballistic Missile (ABM) Treaty. The President took this step as part of a broader change in our defense policy to reflect new threats that we face. As a result of the withdrawal we are now free to develop, test, and deploy effective defenses against missile attacks from rogue states like North Korea and Iran—states that are investing a large percentage of their resources to develop weapons of mass destruction and offensive ballistic missiles at the expense of the basic needs of their people. The scope of this growing threat to the U.S. and our allies and friends is compounded by the fact that the states that are developing these terror weapons have close links to a variety of terrorist organizations. States or even non-state actors could use container ships to launch shorter-range missiles against our territory. As the President said in his State of the Union Address, we must not allow the world's most dangerous regimes to threaten us with the world's most dangerous weapons.

The missile defense program is now executing an aggressive research, development, test, and evaluation (RDT&E) program focusing on a single integrated ballistic missile defense system designed to defend the territories and deployed forces of the U.S., allies and friends against ballistic missiles of all ranges and in all phases of flight. As previously noted, the Kwajalein Atoll, home to the Ronald

Reagan Ballistic Missile Defense Test Site, provides a unique venue for live testing of missiles of all ranges because of its location and specialized, state-of-the-art data-gathering devices. Access to the Kwajalein Atoll is currently set to expire in 2016. However, our missile defense and space programs, and including those on Kwajalein, are programs with a long-lead time, we forecasted that we would need Kwajalein well beyond the 2016 date. As we continue to test and develop our missile defense system and capabilities, the Kwajalein Atoll will remain a significant test resource for future missile defense testing.

After considering these changes in the strategic environment since the 1999 study, DoD's reassessment in 2002 determined that the study was still valid. I would argue that the results of the reassessment are somewhat understated. If it is at all possible, I believe that the changes in the strategic environment have only made our defense interests in the FAS even more important.

#### CONCLUSION

It would be unwise to assume that the end of the Cold War or events since then have lessened the strategic importance of the FAS to U.S. national security interests, for as the QDR notes uncertainty will mark the future security environment. Further unrest and points of potential military conflict continue to dot the Asia-Pacific landscape. North Korea's current hostile posture is an unfortunate illustration of the dangerous uncertainty in the region, particularly since North Korea retains the offensive capability of inflicting massive damage on the South in short order. Territorial disputes in the South China Sea and Northeast Asia remain unresolved and provide potential flashpoints. Indonesia's road toward democracy faces challenges as calls for separatism have led to fierce fighting in Aceh and other provinces, and communal violence continues throughout the archipelago. In recent years, we have seen the violent abandonment of the constitutional process in Fiji and in the Solomon Islands, which is currently teetering on the brink of becoming a failed state. Terrorist forces are present in many countries in Southeast Asia: the Philippines, Indonesia, and even in Singapore. September 11th has taught us that there is no unimportant place on the globe. Our inability to see into the future with perfect clarity, therefore, makes the continuation of our defense rights in the FAS essential. Our right to prevent the basing of third country military forces must also be maintained.

We must strive to move this region toward peace and stability. Our task is to dampen the sources of instability by maintaining a policy of robust forward deterrence and military presence, while searching for new opportunities to increase confidence and a spirit of common security. In time of peace, our responsibility also extends to taking actions that develop a strategic environment that will sustain this peace and prevent conflict over time. This is both the challenge and the opportunity we face.

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QUESTIONS SUBMITTED FOR THE RECORD TO ALBERT V. SHORT, DIRECTOR, OFFICE OF COMPACT NEGOTIATIONS, U.S. DEPARTMENT OF STATE, BY THE HONORABLE JAMES A. LEACH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA, AND CHAIRMAN, SUBCOMMITTEE ON ASIA AND THE PACIFIC, AND MR. SHORT'S RESPONSES

*Mr. Leach's Question:*

*What would be the impact on the two countries of losing eligibility for Federal education programs, particularly Pell Grants? How might this impact the broader Compact goals of economic self-sufficiency? Do you know if such a program cut-off is currently being contemplated?*

*Mr. Short's Response:*

It is difficult to determine the precise impact on the Republic of the Marshall Islands (RMI) and the Federated States of Micronesia (FSM), and on the Compact goals of economic self-sufficiency, if these entities are no longer eligible for programs funded by the Department of Education, because we do not know how the RMI or FSM will choose to use the funds they receive under the new Compacts for educational purposes. Under Section 211(c) of the new Compacts, each country would submit an overall development plan to its respective U.S./RMI or U.S./FSM oversight committee explaining how it would spend Compact funds in the education sector, a priority area under the Compacts. Article II, paragraph 1(a) of the Fiscal Services Agreement sets forth a broad range of allowable activities that may be supported with the education sector grant, including improving the educational system at all levels of education, providing secondary education or vocational training to qualified students, and teacher training.

Based on the Department of Education's experience and reports from the General Accounting Office (GAO), the RMI and FSM have used Compact funds to pay expenses such as school construction, maintenance and repairs of schools, and teacher salaries, although Compact funds have also been used for other activities such as special education.<sup>1</sup> Activities supported by Department of Education grants across program areas have included curriculum development, school supplies, educational materials, teacher training, and special education expenses. Thus, the loss of eligibility of Department of Education funds may mean that the RMI and FSM will have to focus more Compact funds or local resources on direct services to children.

Pell Grants, which also provide grant assistance for RMI and FSM residents to attend U.S. colleges and universities, provide significant support to the College of the Marshall Islands and the College of Micronesia. Residents of the RMI and FSM will remain eligible for Pell Grants after the Compacts take effect (presumably 10/1/03), under the current provisions of title IV, Part A, Subpart I of the Higher Education Act of 1965 (HEA). These provisions will expire on September 30, 2004. At this time, the Department of Education has not developed a reauthorization proposal for the HEA, including title IV.

*Mr. Leach's Question:*

*The Department of State has indicated its intent to increase staffing dedicated to administering and overseeing future Compact assistance. What is the Department's potential, contemplated staff increase, and how was the determination made that this was the appropriate level of staff? Where will the additional staff be located, and on what basis was that location chosen? How much are those plans expected to cost?*

*Mr. Short's Response:*

As part of Compact implementation, the Bureau for East Asian and Pacific Affairs will create a Freely Associated States (FAS) unit within the Office of Australia, New Zealand and Pacific Island Affairs (ANP). We will draw from current ANP staff, with a devoted deputy director and a country officer assigned to the unit. The bureau is seeking a full time economist position for the unit as well. Salary and benefits for the proposed economist position would be approximately \$100,000 per year, plus approximately \$15,000 in start-up costs.

*Mr. Leach's Question:*

*How is Congress' authority changed under the new Compact? For example, under the new Compact and the anticipated implementing legislation, can any of the agreements (such as the military use, fiscal procedures, or trust fund agreements) be amended without Congressional approval? How does that compare with the Congressional role under the old Compact?*

*Mr. Short's Response:*

Under both P.L. 99-239 and the proposed amended legislation, no change to the FSM and RMI Compact(s) may enter into force until after Congress has incorporated it into an Act of Congress (see section 101(d)(1) and (2)(a) of P.L. 99-239 and the proposed legislation). The same rule applies to changes to the Mutual Security agreements with the FSM and RMI (see section 101(d)(2)(B)) and to changes to the section 177 Agreement with the RMI resolving claims arising from nuclear testing in the RMI (section 101(d)(2)(C)).

Under the proposed legislation, this rule would no longer apply to the FSM and RMI Law Enforcement subsidiary agreements but would apply to the new agreements regarding the trust funds with the two countries (section 101(d)(2)(C)). Similarly, under the proposed legislation, the rule would continue to apply to specified sections of the Military Use and Status of Forces agreements with the two countries but would no longer apply to portions of the telecommunications or federal programs agreements or to the section 234 agreement (see section 101(d)(2)(D)).

For portions of the subsidiary agreements that were not covered by the rule in section 101(d)(2), P.L. 99-239 provided that some specified provisions could not be amended without providing Congress 30 days in which to pass a joint resolution of disapproval. Any agreement to change any other provisions in the subsidiary agreements could not take effect until transmitted to Congress with an explanation. The proposed legislation would provide that any portion of the subsidiary agreements not identified in section 101(d)(2) may not take effect until transmitted to Congress with an explanation.

<sup>1</sup>January 2002 GAO report, *Foreign Assistance, Effectiveness and Accountability Problems Common in U.S. Programs to Assist Two Micronesian Nations*, pp. 13-14.

Compact of Free Association  
Federates States of Micronesia (FSM) and Republic of the Marshall Islands (RMI)  
Congressional Involvement in Agreement Change/Amendment

	Requires Congr. Action	Requires Congr. Notification
Compact as Amended	X	
Federal Programs and Services Agreement including <ul style="list-style-type: none"> <li>• Postal Services and Related Programs</li> <li>• Weather Service and Related Programs</li> <li>• Civil Aviation Safety Service and Related Programs</li> <li>• Civil Aviation Economic Services and Related Programs</li> <li>• United States Disaster Preparedness and Response Services and Related Programs</li> <li>• Telecommunications Services and Related Programs</li> <li>• Federal Deposit Insurance Corporation (FSM Only)</li> </ul>		X
Law Enforcement Agreement (Section 175(a))		X
Labor Agreement (Section 175(b))		X
Fiscal Procedures Agreement		X
Trust Fund Agreement	X	
Military Use and Operating Rights Agreement		X
Status of Forces Agreement	(certain sections) X	
Section 462(a) list : <ul style="list-style-type: none"> <li>• 177 (RMI only)</li> <li>• Persons Displaced as a result of U.S. Nuclear Testing Programs (RMI)</li> <li>• Resettlement of Enjebi Island (RMI)</li> <li>• 234 Agreement</li> <li>• Mutual Security Pursuant to Sections 321 and 323</li> <li>• Marine Sovereignty and Jurisdiction (FSM)</li> </ul>	X     X	     X

Notes:

1. Agreements apply to both FSM and RMI except as noted.
2. Chart based on Compact Act as submitted to U.S. Congress.  
July 10, 2003

**Mr. Leach's Question:**

*In your view, do the FSM and the RMI have the technical capabilities necessary to meet the terms of future assistance by this fall? For example, will they be able to establish appropriate performance measures and implement grant conditions in areas such as financial management standards or procurement?*

**Mr. Short's Response:**

We expect that the FSM and RMI will have the technical capability to fulfill the requirements of future assistance. The new provisions include standard requirements for managing Federal financial assistance, the same requirements to which state and local governments in the United States are subject when they receive grants from the federal government. These requirements include the authority of the U.S. Government to enforce compliance, and thus protect against waste, fraud and abuse. This key element was missing in the first negotiated Compact financial assistance arrangement.

The RMI and FSM have had considerable experience with several U.S. federal programs and these same requirements and remedies; hence little is new to them at a professional level. A new element that should help ensure improved performance is the creation of joint management boards that will make determinations on the annual allocation of Compact funds among six sectors and will ensure both program and economic performance goals are being addressed and closely monitored. One of the six sectors is capacity building, allowing the United States and the freely associated states to identify deficiencies in technical and management capabilities and direct resources toward specific problems areas. This funding will be further augmented by technical assistance in a variety of areas provided by the Department of the Interior, including but not limited to financial management (including procurement), economic and statistical collection and analysis, operations and maintenance of infrastructure, planning and budgeting, and economic development. Interior has already provided technical assistance funding this past year.

*Mr. Leach's Question:*

*I understand that the U.S. and the Marshall Islands took the Compact renegotiation as an opportunity to extend the U.S. lease of the missile testing site at Kwajalein for an additional 50 years, with an option for 20 beyond that. What agency will be responsible for seeking authorization and appropriations to pay for access to Kwajalein after 2023 as established in the amended Compact?*

*Mr. Short's Response:*

The Administration's amendments to the Compact which include the Military Use and Operating Rights Agreement, now before the Congress, do not change the method of funding or the Department of the Interior's responsibility for the oversight and control of all Compact funding from what is currently provided. The Administration's proposed amendments cover the full term of Compact financial assistance, which includes the 50/20 year lease option extensions of the Kwajalein Missile Range. Enactment of the Administration's amendments will not require a new authorization after 2023 to extend the Kwajalein lease terms; the extension is included in the Administration's amendments.

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ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD BY THE OFFICE OF COMPACT  
NEGOTIATIONS

POLICY REGARDING THE RELATIONSHIP BETWEEN CERTAIN U.S. FEDERAL PROGRAMS  
AND THE COMPACT OF FREE ASSOCIATION, AS AMENDED, WITH THE FEDERATED  
STATES OF MICRONESIA (FSM) AND THE REPUBLIC OF THE MARSHALL ISLANDS (RMI)

Under section 221(b) of Title Two of the amended Compact we have recently signed with the FSM and RMI, to the extent authorized by the Congress of the United States, the Government of the United States would make available to the FSM/RMI the services and programs that were available on the effective date of the Compact, as amended.

This provision keeps the door open for the continuing eligibility of the FSM/RMI for U.S. federal programs, to the extent provided by the Congress. It does not assume that particular federal programs are to be continued nor does it operate to reinstate any programs that terminated prior to the effective date of the Compact, as amended. It does acknowledge the role of Congress in determining the appropriateness, continuing applicability, and funding for such programs in the future.

The amended Compact, to be submitted by the Administration to Congress for passage, would provide continued economic support to the FSM/RMI. While the Administration was aware of the level, type, and status of existing federal programs when formulating the Title Two assistance, the amount of the assistance was not specifically structured to substitute for or replace existing programs, nor intended to express a view with respect to continuation or reauthorization of any federal program.

The Administration, including agencies administering federal program funds to the FSM/RMI, will continue to update Congress on the appropriateness and effectiveness of federal programs and U.S. funding to the FSM/RMI.

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QUESTIONS SUBMITTED FOR THE RECORD TO DAVID B. COHEN, DEPUTY ASSISTANT SECRETARY OF THE INTERIOR FOR INSULAR AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, BY THE HONORABLE JAMES A. LEACH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA, AND CHAIRMAN, SUBCOMMITTEE ON ASIA AND THE PACIFIC, AND MR. COHEN'S RESPONSES

*Mr. Leach's Question:*

*The Department of the Interior has indicated its intent to increase staffing dedicated to administering and overseeing future Compact assistance. What is the Department's potential, contemplated staff increase, and how was the determination made that this was the appropriate level of staff?*

*Mr. Cohen's Answer:*

The Compact implementation team will be composed of nine staff members. A program specialist was hired prior to fiscal year 2003 and is located in the United States Embassy in Pohnpei, FSM. One position was recently filled in Washington by a senior grants manager, who will serve as the overall program coordinator. Five positions are currently being recruited for an office in Honolulu and should be filled before the end of August. These include two financial positions with accounting/auditing backgrounds and one program specialist with an economics background. We are also recruiting two program specialists for the Honolulu office, one with a background in health care and one with a background in education. We are also currently recruiting a program specialist to be placed in the United States Embassy in Majuro, Republic of the Marshall Islands. Finally, we expect to fill a sixth position in Honolulu early next year, which will be for an engineer to help monitor and oversee infrastructure development. In summary, the total increase in permanent staff will be nine positions, of which six will be located in Honolulu, one in Pohnpei, one in Majuro, and one in Washington, D.C. If we need additional help, particularly in the early stages of Compact implementation, we can obtain it through temporary positions, reimbursable arrangements with other Federal agencies, or contractual arrangements.

The determination of the appropriate level of staffing was made after considerable input from external sources and internal discussion within the Department, including comparisons of the staff to dollars ratios in similar financial assistance programs. OIA also evaluated and sought input regarding the mix of personnel; thus there will be specialists in the three major sector areas under the Compact: health, education and infrastructure as well as personnel with strong financial backgrounds. Feedback from several sources indicated a strong need for some permanent on-site personnel. This resulted in a decision to place generalists in each of the embassies, who will constantly receive and evaluate information on the ground and either take necessary action to correct problems or pass information to the appropriate specialists. The single position in Washington will serve an overall coordinating role. OIA's staffing proposal was reviewed and approved by the Department, by the Office of Management and Budget and by the Congress in the appropriations process.

*Mr. Leach's Question:*

*Where will the additional staff be located, and on what basis was that location chosen?*

*Mr. Cohen's Answer:*

The nine positions will be located as follows: one in Washington, D.C. (program coordinator), six in Honolulu (two auditor/accountants, three program specialists and one engineer), one in Majuro (program specialist) and one in Pohnpei (program specialist). A position in Washington is necessary because (1) the budget process occurs in Washington, (2) all disbursements are made from Washington, (3) inter-agency group coordination take place in Washington and (4) day-to-day liaison with the Department of State is facilitated in Washington.

There were a number of reasons for the decision to place the majority of positions in Honolulu. One reason is to avoid duplication by not having to replicate staff in both freely associated states. The Honolulu location is the one place in the United States with business day overlap with the freely associated states, Washington, D.C. and the West Coast with its Region Nine offices. Region Nine plays a coordination role for Federal programs, and Honolulu is where programs are based that serve the freely associated states. In-depth institutional knowledge regarding the freely associated states can be found in Honolulu at the East West Center, the University of Hawaii, the U. S. Army Corps of Engineers and in hospitals experienced in medical referrals. Another very important reason is the ability to recruit and retain high quality professional staff on a permanent basis. The Honolulu team will be able to

travel frequently to the freely associated states. While travel costs are high from Honolulu, additional travel costs are offset by not having to supply permanent housing, post differential, home leave, and education for dependents that come with foreign posts. The placement of personnel in Honolulu avoids additional costs such as permanent changes of station associated with a much higher anticipated turnover rate for personnel in remote locations. We decided, however, to maintain a Department of the Interior official in each of the embassies to ensure a continuous on-site presence and close coordination at all times with the United States ambassadors and their staffs.

*Mr. Leach's Question:*

*How much are those plans expected to cost?*

*Mr. Cohen's Answer:*

We budgeted \$800,000 to establish the offices in fiscal year 2003 and an additional \$900,000 to fully fund all positions in fiscal year 2004. Thus we estimate the total cost for full operations of the Compact implementation team will be approximately \$1.7 million annually.

*Mr. Leach's Question:*

*In your view, do the FSM and the RMI have the technical capabilities necessary to meet the terms of future assistance by this fall? For example, will they be able to establish appropriate performance measures and implement grant conditions in areas such as financial management standards or procurement?*

*Mr. Cohen's Answer:*

We believe that the FSM and RMI have the technical capability to fulfill the requirements of future assistance. The new provisions include standard requirements for managing Federal financial assistance, the same requirements to which state and local governments in the United States are subject when they receive grants from the Federal government. These requirements include the authority of the Department of the Interior to enforce compliance, and thus protect against waste, fraud and abuse. This is an element that was missing in the first negotiated Compact financial assistance arrangement. The RMI and FSM have had considerable experience with numerous United States Federal programs and these same requirements and remedies, so there is very little that will be new to them at a professional level. One new element that should help ensure improved performance is the creation of joint management boards that will make determinations on the annual allocation of Compact funds among six sectors and will ensure both program and economic performance goals are being addressed and closely monitored. One of the six sectors is capacity building; this will allow the United States and the freely associated states to identify deficiencies in technical and management capabilities and direct resources toward specific problems areas. This funding will be further augmented by technical assistance in a variety of areas provided by the Department of the Interior, including but not limited to financial management (including procurement), economic and statistical collection and analysis, operations and maintenance of infrastructure, planning and budgeting, and economic development. Interior has already provided technical assistance funding this past year that will aid the freely associated states in complying with new Compact fiscal and reporting requirements. In meetings in Honolulu subsequent to the hearing, the FSM Secretary of Finance stated that the Federated States of Micronesia will be ready to comply with the requirements by October 1, 2003.

In summary, the Department of the Interior has a great deal of confidence in the abilities and the dedication of the governments of the freely associated states and believes that the new Compact provisions and oversight personnel will deliver the more stringent accountability we all desire.

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QUESTIONS FOR THE RECORD SUBMITTED TO SUSAN S. WESTIN, MANAGING DIRECTOR, INTERNATIONAL AFFAIRS AND TRADE, GENERAL ACCOUNTING OFFICE, BY THE HONORABLE JAMES A. LEACH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA, AND CHAIRMAN, SUBCOMMITTEE ON ASIA AND THE PACIFIC, AND MS. WESTIN'S RESPONSES

*Mr. Leach's Question:*

*What would be the impact on the two countries of losing eligibility for Federal education programs, particularly Pell Grants? How might this impact the broader Compact goals of economic self-sufficiency? Do you know if such a program cutoff is currently being contemplated?*

*Ms. Westin's Response:*

We have reported that the U.S. Department of Education provided grant funding to the FSM and the RMI through a variety of programs, including adult education, honors scholarships, client assistance, special education, vocational education, federal work study, and Pell Grants. Pell Grants have been the largest U.S. education program. Pell Grants provided 13,704 students with grant assistance to attend the College of Micronesia (a 2-year, U.S. accredited college) in the FSM between 1988 and 2000. About 85 percent of the College's students received Pell Grants. In the RMI, Pell Grants provided 4,375 students with grant assistance to attend the College of the Marshall Islands (a 2-year, U.S. accredited college) between 1993 and 2000, where more than 90 percent of the students received Pell Grants. In both countries, Pell Grants were the major source of funding for their college and loss of Pell Grants would bankrupt the colleges and eliminate the sole opportunity for most citizens to obtain a local, U.S. accredited college education. Further, Pell Grants also provided grant assistance for FSM and RMI students attending U.S. colleges. U.S. embassy, FSM, and RMI officials told us that U.S. education programs were critical and the countries were dependent on the U.S. program assistance. For example, according to FSM and RMI officials, the loss of U.S. programs would end special education assistance, the poorly supplied school systems might stop functioning entirely, and the sole U.S.-accredited colleges in the FSM and the RMI might collapse.

*Mr. Leach's Question:*

*How is Congress's authority changed under the new Compact? For example, under the new Compact and the anticipated implementing legislation, can any of the agreements (such as the military use, fiscal procedures, or trust fund agreements) be amended without Congressional approval? How does that compare with the Congressional role under the old Compact?*

*Ms. Westin's Response:*

Under the amended Compacts' proposed enabling legislation, the Compact itself and certain select agreements, or portion of such agreements, would require an Act of Congress to be amended, changed or terminated. All other agreements could be amended, changed or terminated after the President transmits the agreement to the President of the Senate and the Speaker of the House of Representatives with an explanation of, and reason for the agreement.

This differs somewhat from the current compacts' enabling legislation. Under this legislation, the Compact and subsidiary agreements are divided into three groups. The first group requires an Act of Congress to amend, change or terminate any agreement in that group. The group includes the Compact and certain select subsidiary agreements, or portions thereof. For the second group of agreements, any amendment change or termination has to be sent to Congress for a thirty-day period. During this time, if Congress passes a joint resolution of disapproval, then the change or termination will not take effect. Again, this group consists of select subsidiary agreements or portion thereof. The third group, which consists of all the remaining agreements, can be amended, changed or terminated after the President transmits the agreement to the President of the Senate and the Speaker of the House of Representatives with an explanation of, and reason for the agreement.

There are some changes between the current and proposed enabling legislation as to the list of agreements that require an Act of Congress to be changed, amended or terminated. For example, the agreement regarding Mutual Assistance in Law Enforcement matters requires, under the current enabling legislation, an Act of Congress to be amended, changed or terminated. Under the proposed enabling legislation only Congressional notification would be required. However, for the most part, the list of agreements requiring an Act of Congress are very similar in the two pieces of legislation. Thus, the most notable change in the proposed enabling legislation is the absence of the second category of agreements—those agreements that are sent to Congress for a thirty-day period and possibly subject to a joint resolution of Congressional disapproval. Under the proposed enabling legislation, those agreements, or portion of agreements, that are in the second category under the current legislation, and are included as part of the amended Compact, would then be in the category of congressional notification.

*Mr. Leach's Question:*

*Under the new Compacts, the FSM and RMI will no longer be eligible for FEMA (Federal Emergency Management Agency) assistance. How does the "replacement" eligibility for USAID Office of Foreign Disaster Assistance coverage compare to the previous FEMA coverage? Is it of comparable value or automaticity?*



*Ms. Westin's Response:*

FEMA assistance was intended to help states and localities respond to, plan for, recover from, and mitigate against disasters. Disaster assistance services were made available to the FSM and the RMI in the same manner as assistance was made available to U.S. states. FEMA was to make disaster preparedness improvement grants on an annual basis and to provide hazard mitigation grants and disaster assistance as determined by the President. A request for a declaration by the President that a major disaster or emergency exists is made by the Governor of the affected state, or in the case of the FSM and the RMI, the nation's President. A damage assessment is conducted and included with the request. FEMA provides a range of assistance: for example, individuals can receive temporary housing assistance (home repairs, rental assistance), individual and family grants, and unemployment benefits and FEMA can fund the repair or replacement of public facilities and infrastructure. For the period 1986 through 2000, FEMA has provided the FSM with \$36.3 million in direct assistance and through other U.S. agencies provided an additional \$6.3 million for seven typhoons and two droughts. For the same period, FEMA has provided the RMI \$18.5 million in direct assistance and through other U.S. agencies provided an additional \$7.5 million for seven disasters including typhoons, droughts, and high wave actions. Since 2002, the President has declared three major disasters in the FSM related to two typhoons and one tropical storm. FEMA officials have reported that conditions in the FSM and the RMI have significantly reduced program accomplishments and increased costs.

USAID Office of Foreign Disaster Assistance provides short-term emergency non-food humanitarian assistance in response to a declaration of a foreign disaster made by the U.S. Ambassador or the U.S. Department of State. The office can immediately provide up to \$50,000 to the U.S. Embassy or USAID Mission to purchase relief supplies locally or give a contribution to a relief organization. The office can also send its own relief supplies, such as plastic sheeting, tents, blankets, and water purification units from its four stockpiles, one of which is located in Guam. Historically, long-term reconstruction and rehabilitation has been provided by USAID through normal programming procedures. Congress has provided special authorization for relief, rehabilitation, and reconstruction following disasters. For example, after Hurricanes Mitch and Georges struck Central America and the Caribbean in the fall 1998, Congress, in May 1999 passed emergency supplemental legislation that, among other things, provided \$621 million for a disaster recovery and reconstruction fund for the affected countries as well as reimbursement funds to U.S. agencies for costs incurred during the immediate relief phase. USAID is the lead agency for this effort that includes repairing or rebuilding economic infrastructure (for example, roads and bridges), public health infrastructure, housing, and schools. In addition funds are allocated as loans, credits and technical assistance for small and medium-sized firms farms and businesses.

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PREPARED STATEMENT OF GERALD M. ZACKIOS, FOREIGN MINISTER, REPUBLIC OF THE MARSHALL ISLANDS, SUBMITTED FOR THE RECORD BY THE HONORABLE ENI F. H. FALEOMAVAEGA, A REPRESENTATIVE IN CONGRESS FROM AMERICAN SAMOA

RENEWAL OF THE COMPACT OF FREE ASSOCIATION BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF THE MARSHALL ISLANDS

*Summary*

On behalf of the people of the Republic of the Marshall Islands and their government, I want to express the gratitude of my nation to this Committee for initiating review by the U.S. Congress of agreements to sustain the success of free association between our governments. The agreements that have been signed by our governments to renew expiring provisions of the Compact, and to adapt some of its provisions to our evolving alliance amid new realities, were negotiated in a spirit of friendship and respect. Consistent with the unique history and features of our bilateral alliance as discussed below, both the U.S. and the RMI negotiators have consulted regularly with the Members and staff of this and other Committees of the U.S. Congress regarding the progress of our consultations.

The Government of the Marshall Islands fully supports and respectfully requests that Congress approve the agreements that have been reached. My government is also seeking early approval of the agreements by the Nitijela, our national parliament. President Note and his Cabinet believe the agreements will provide continuity and stability that is imperative in our bilateral relationship with the United States, thereby also enabling the RMI to continue, domestically and internationally, to support the political, social and economic development of our people.

As must be expected in such comprehensive agreements concerning an unprecedented alliance, there remain issues that must be the subject of further consultations and negotiations as we move forward with approval of these agreements, and as we implement them in the years ahead. While no treaty governing so many complex bilateral issues approaches perfection, the agreements signed by our governments either address or preserve for further consultations the central and critical concerns that both our governments brought to the negotiating table.

In addition to renewal of expiring economic assistance as well as mutual security and defense provisions, we have constructively and affirmatively addressed issues of fiscal administration, accountability and migration in a manner that preserves the principles of free association in a fair and balanced way. Although our negotiators sometimes had to consider but reject preliminary proposals to address these issues, the RMI was not a reluctant party to reforms that serve the mutual interests of both our governments and peoples.

My government hopes and expects that all issues pending between our nations can and will be addressed in the same spirit of trust, justice and partnership that produced the Compact renewal agreements. We believe outstanding issues can be resolved positively in a way that preserves the allocation of benefits and burdens in this closest of alliances that has served our separate and mutual national interest so well for so long.

These pending issues include: 1) a full inflation adjustment for Compact funds so that the grant assistance and compensation provided by the Compact does not lose real value and fully compensates the RMI and its citizens for its continued support and commitments of the Compact's provisions; 2) the continuation of Federal education programs and services that are an integral part of the RMI's education system and, if removed, would severely injure the delivery of education in the RMI as well as injure education opportunities for Marshallese youth; 3) Congressional support to assist the repaving of the Majuro International Airport so U.S. commercial air service and military access is maintained for the sole international air link for the RMI and a crucial link for the Micronesian region; 4) continued eligibility for FEMA disaster and rehabilitation assistance especially since most of our infrastructure has been and will continue to be built using Compact funding and since our low-lying atoll environment is highly susceptible to natural disasters; 5) Congressional support for a Kwajalein Landowner Trust Fund; and 6) Congressional consideration of nuclear claims issues arising from the U.S. Nuclear Weapons Testing Program.

In reference to these issues, I am submitting with this statement several issue papers that summarize where continued agreement is required. We look forward to working with the Committee and its staff on these pending matters.

#### *Background*

The Compact of Free Association is a significant foreign policy success for the United States and the Republic of the Marshall Islands. It has roots in the Atlantic Charter's repudiation of territorial aggrandizement through armed conflict. It also represents the successful realization of decolonization principles embodied in the United Nations Charter, redeeming America's values with respect to individual liberty, democratic self-determination, and the rule of law.

The Compact of Free Association is an international agreement between the United States and the Republic of the Marshall Islands. It defines an alliance between two countries with separate sovereignty, nationality and citizenship. Under applicable U.N. resolutions, free association could have been structured legally and politically to be more like a territorial possession or dependency. Instead, our governments forged an agreement based on terms that reflect the unique features of our respective national constitutions.

Thus, the Compact of free Association allows delegations of government functions that respect the boundaries between our constitutional systems. The constitution and laws of the U.S. do not apply directly or of their own force in the RMI, and vice versa. Under the Compact, there are special arrangements for government economic assistance, government programs and services, legal and political undertakings that are unique in U.S. international relations, as well as special provisions for cultural, educational, economic and other people-to-people relationships.

However, the government-to-government relationship is based on the principle that the U.S. Constitution applies only to U.S. citizens and to the United States, and the Constitution of the Republic of the Marshall Islands applies only to RMI citizens and in the RMI. There is no co-mingling, overlapping or duality of sovereignty, nationality or citizenship in a manner that blurs the separate nationhood of our two countries. This ensures that free association is not colonialism by another name, or a territorial dependency in disguise.

The foundation of this association, the feature that legitimizes it as non-colonial, is that the Compact of Free Association is terminable at will by either party. This is compatible with international law and with the principle that free association must respect and be consistent with the right of both our countries to national independence. Because this free association formula is legally structured as an alliance and not a territorial dependency, the Republic of the Marshall Islands is a member of the United Nations in its own name and right. The right of each party to terminate without the mutual consent of the other party is the feature that makes U.N. membership possible, notwithstanding the delegations of government powers under the Compact. This arrangement includes the so-called U.S. defense veto, which, by the way, has never unduly interfered with the exercise by the RMI of its foreign affairs powers as some predicted. Even if some provisions survive termination, the termination provisions give each government the power to end the association and conduct relations as totally independent nations with specific treaty rights subject to international law, but without a treaty of association.

#### *Historical Experience*

The specific features of the alliance reflect four decades when the U.S. government was the only government we had in the Marshall Islands. Under the 1947 Trusteeship Agreement between the United Nations Security Council and the United States, for forty years the U.S. exercised plenary and supreme powers in all legislative, executive and judicial functions of government in our islands. After the U.S. military occupation that began in 1946 ended in 1951, civilian administration began. From 1951 to 1986 the U.S. Department of the Interior was the source of all legal and political authority, as well as the source of all funding and budget policy, in accordance with U.S. federal law and Congressional oversight.

Under Article 3 of the Trusteeship Agreement, the U.S. had “. . . full power of administration, legislation and jurisdiction . . .” in the Marshall Islands and the rest of the Trust Territory of the Pacific Islands. That degree of authority is indistinguishable from conventional absolute and supreme sovereignty, but unlike in the U.S. and its territories federal powers in the trust territory were not limited by any of the constitutional checks and balances, reservations of sovereignty to the people, due process or guaranteed individual rights found under the U.S. Constitution.

Rather, the Trusteeship Agreement committed the U.S. as administering power to promote democratic local self-government, but only as deemed appropriate at the discretion of the United States. While the U.S. promoted a political and legal system based on U.S. standards of due process and individual rights, those standards were implemented permissively rather than as a matter of constitutional rights. As might be expected even under the most benevolent administration, the trusteeship governing practices fell well short of a system with legally enforceable individual rights and political equality.

While local self-government was eventually established, for four decades the U.S. had as much or more authority in the Marshall Islands and over our people as it did over U.S. citizens in the states, but the local population had no voting rights, representation or other political rights in the political system of the supreme administering authority. This resulted in anomalies such as place of origin and race based wage and salary systems, as well as takings of land for public purposes, including nuclear testing, without due process or measures to make dislocated people whole for their losses.

The U.S. carried out extensive education, health care and public works infrastructure programs in the islands during the trusteeship. Through open immigration for education and introduction of federal programs and policies in the trust territory very similar in many ways to federal administration of Guam and other U.S. territories, the close people-to-people relationships that have flourished from 1946 to the present formed bonds that are critical to the continued social, economic and political development of the RMI.

In addition, under the trusteeship the U.S. implemented policies insulating and even isolating the islands from the governments, commercial enterprises, travelers and even scholars of nations other than the United States. The Marshall Islands were closed to the outside world for decades in the name of international security during the nuclear testing program. This contributed to the formation of interdependency under the trusteeship in which the U.S. benefited strategically and the islands benefited in terms of social and economic development. There were costs as well on both sides, but this interdependence is at the heart of the alliance that continues to this day. That alliance has grown into a mutual security partnership that is literally a closer alliance than NATO.

The free association alliance also involves RMI reliance of U.S. social and economic support, including financial aid and migration rights defined in the Compact.

While those at the Department of the Interior and the State Department familiar with the history of the RMI and U.S. relationship understand that this is not some kind of economic windfall for the RMI, others who do not understand often ask simplistic questions like, "Why does the U.S. provide more economic assistance per capita to the RMI than it does to country X or Y?"

The best answer to the flawed premise of that question might be another question: "Did the U.S. prevent country X or Y from entering into social, economic, commercial and political relations with any other country during the four decades after WWII in which the modern world economic and political order was established?" Or, "Did the U.S. relocate populations within country X or Y and conduct 67 atmospheric nuclear tests in the homelands of those populations?" Another good question might be, "How could the U.S. abandon the social, economic and political partnership it promoted for four decades under the trusteeship without ensuring that it keeps all its legal, political, economic and moral commitments to its friends and allies?"

Fortunately, those in the U.S. government who know and understand the history of this alliance have prevailed over those who do not, and we have negotiated agreements that positively advance both U.S. and RMI national interests. At the same time, the new agreements demand that reforms be implemented to enhance the association and advance progress toward greater economic, social and political development for the RMI.

#### *Unfinished Business of Nuclear Claims Legacy*

At the same time, it must be noted that it was not until the Marshall Islands became a self-governing republic and entered into the Compact of Free Association in 1986 that the people of the RMI were enfranchised in the political system through which the supreme law of their homeland is promulgated. Ironically, it was at that very moment that the U.S. terminated access for RMI citizens to the courts of the United States for claims arising from the U.S. nuclear testing program.

While all other categories of claims arising from U.S. administration were allowed to proceed through the local court system into the U.S. Court of Appeals for the Federal Circuit for review and certification, the nuclear testing claims were diverted into a special claims settlement process based on the historical legal precedent of government-to-government espousal and assignment of claims arising from the Russian and Iranian revolutions. For the U.S. to adopt a claims settlement procedure for transition from trusteeship to free association modeled after the claims settlements employed to deal with the turmoil of two of the most violent revolutions in the last century, revolutions hostile to U.S. interests, was surprising to the RMI. This was especially so since the U.S. had undertaken trusteeship obligations to protect the natural resources and environment in the islands, and the settlement was intended to release the U.S. from those obligations, not as in the earlier cases of claims assignment to release a hostile foreign government from its obligations to the United States.

However, the U.S. negotiators assured the RMI that the end result would be adequate compensation by U.S. standards. The settlement is "full and final" only if it is supported by adequate compensation. That is obvious, and that is what the settlement agreement reached under Section 177 of the Compact requires as a matter of U.S. law. In dismissing the nuclear test cases after the settlement was approved by Congress, federal courts recognized that the citizens of the trust territory had stated claims against the U.S. that were dismissed only because an alternative forum had been provided, and that the adequacy of compensation would be determined after the political process under the settlement had been substantially complete.

The problem that has arisen, as the attached issue paper regarding the nuclear test legacy explains, is that the U.S. Congress has not responded to the RMI's petition for additional compensation to be provided through the political process contemplated by the settlement agreement. The RMI understands that responding to the RMI's petition for additional compensation in the political process may be difficult, which is why the RMI is proposing that the awards of the RMI Nuclear Claims Tribunal (NCT) be returned to the legal process on the basis of a limited grant of jurisdiction to review, and reject or certify the awards of the NCT, based on U.S. standards of adequate compensation.

This would return the nuclear claims back to the same procedure employed for all other claims. Now that the NCT has determined the extent of damages with far greater precision than was possible in 1985, and changed circumstances exists due to improved scientific knowledge of radiation injuries and contamination, there is not reason not to allow the U.S. courts to review and certify nuclear test claims just as it has other categories of claims. The Section 177 claims settlement served its purpose well by not allowing these claims to delay trusteeship termination. This al-

lowed President Reagan's Strategic Defense Initiative to move forward based at Kwajalein in the RMI without Soviet interference in the U.S. Trusteeship Council. But that is now history, and there is no reason to delay much less deny justice for the RMI nuclear test claimants any longer.

During the course of our negotiations on amendments to the Compact, my Government raised unresolved issues related to the Nuclear Testing Program. However, the U.S. Negotiator informed me that the nuclear issues identified in the RMI's changed circumstances petition were on a separate track and that he was not authorized to deal with those issues in the context of our negotiations. In response to a March 2003 request from Congress, the U.S. Department of State did, however, begin to coordinate a U.S. Administration review process of the RMI's petition. It has been over a year since Congress requested a review of the changed circumstances petition and, in repeated queries regarding the progress of that review, the RMI has been informed that there is no definite date for its completion. Communities affected by the testing should not be made to wait any longer.

Congress authorized establishment of the NCT under RMI law, and former U.S. Attorney General Dick Thornburgh has issued an independent report concluding that the NCT has operated in accordance with U.S. judicial standards. A copy of the executive summary of that report is attached to my testimony. Because of this Committee's jurisdiction in treaty aspects of international claims matters, the preceding discussion of the Section 177 nuclear claims issue is an important part of the record of this hearing.

#### *Amendments to the Compact*

There are several areas where the Compact has been amended which the RMI Government wishes to highlight. One of the most important areas is accountability based on the new Section 211 grant assistance provisions and the new Fiscal Procedures Agreement. The RMI Government is committed to allocating grant assistance to the sectors described in the new Title Two, particularly in the sectors of education and health. The new fiscal procedures agreement will usher in a new era of accountability for the use of Compact funding which we believe will benefit the government and people of the RMI in the years to come. The RMI Government is committed to making our new agreements work and we have already started to undertake the changes necessary in our finance, accounting and budget systems to implement these new provisions. Nonetheless, we will need additional assistance in our efforts in order to make these agreements to work. Both governments need to work closely together, particularly in the early years of the new Compact grant funding to ensure realization and the full implementation of the new accountability provisions.

Finally, the RMI Government supports the entire package of amendments to the Compact noting the issues listed above. We are also hopeful for a timely approval of the Compact, as amended, since current Compact assistance will expire on September 30, 2003. Both the RMI and U.S. negotiators have worked very hard in crafting amendments to the Compact in light of the history of our relationship during the past seventeen years. The RMI Government looks forward to continuing its special relationship of free association with the United States in the future to the benefit of both nations.

#### *Conclusion*

On behalf of the Government and People of the Republic of the Marshall Islands, please allow me to express my sincere appreciation to this Committee for the opportunity to submit testimony at this hearing. The RMI Government looks forward to working with you in the months ahead.

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PREPARED STATEMENT OF THE HONORABLE PETER CHRISTIAN, SENATOR, THE FEDERATED STATES OF MICRONESIA, AND CHIEF NEGOTIATOR OF THE JOINT COMMITTEE ON COMPACT ECONOMIC NEGOTIATIONS OF THE FEDERATED STATES OF MICRONESIA

Mr. Chairman,

I have the honor to provide written testimony on behalf of the Federated States of Micronesia, and wish to thank you and the Members of the Committee for holding this important and timely hearing on a matter of utmost importance to my nation.

Further, Mr. Chairman, I wish to thank you and the Members for your understanding in affording me the opportunity to review the Administration's proposed Compact legislation prior to submitting testimony.

Mr. Chairman, the negotiations have evolved considerably since your Committee last considered the matter in 2002. We have now reached agreement with the US on all elements of an amended Compact package. We joined the US in signing these

agreements in May of this year, and look forward to working with Members and staff toward approval of the documents now before you.

We stand at an important juncture in relations between our nations. The amended Compact furthers our mutual commitment to preserve the peace and stability of the central Pacific, and promotes the continued development of the FSM on a sustainable basis. Mr. Chairman, these documents will largely determine the fate of the Micronesian people and the security and stability of the region for the next twenty years and beyond.

The sectoral approach to grant assistance in the new agreement is a marked change from past practice and will require implementation adjustments by both sides. Nonetheless, it provides the best mechanism for reaching our mutual goals in the next twenty years and beyond, and will direct assistance to where it is needed the most.

Similarly, we welcome and are committed to implementing new accountability and oversight requirements. It is no secret that there have been mistakes on both sides under the original Compact. While we were not always in agreement with the tone and findings of the GAO's reports during the past several years, we are thankful to them for undertaking this important initiative and shedding light on deficiencies. This has assisted both the US and FSM negotiators as they worked proactively to address these issues in the amended documents.

At the outset of the talks, the FSM proposed the notion of a joint committee to oversee implementation of the Compact. This proposal was welcomed by the US, and ultimately took the form of the proposed Joint Economic and Management Committee (JEMCO). The JEMCO will consist of representatives from the US and FSM, with a US majority, and will meet regularly to identify any problems in Compact implementation and develop prompt and cooperative responses. This is a positive change from the reactive management policies of the past.

We appreciate the generous nature of the US proposal. However, there remain certain provisions of the Administration's proposal that cause the FSM serious concern. Unless addressed by the US Congress during the approval process, these problems hold the potential to unravel the carefully-constructed fabric of the Compact package we have jointly woven.

First and foremost, our concerns center on the level of economic assistance over the next twenty years. Beginning in 1997, the FSM began work on constructing a comprehensive economic analysis of its needs over the next twenty years. This analysis was at the core of our original economic proposal made in 1999, which called for economic assistance at levels of \$84 million annually over the next twenty years. Six months later, the US responded with an initial offer of \$61 million annually. After further analysis of ongoing macroeconomic trends, the FSM was able to lower its minimum required figure to \$79 million annually. Still, we obviously had a significant difference of opinion.

The FSM demonstrated, unequivocally, that such a marked reduction in current assistance would threaten the very viability of the nation from the outset. On numerous occasions we presented our economic analyses to the US negotiators, and at no time were they met with countering analyses or were fundamental elements disputed. Instead, we were told that the US assistance proposal was the maximum that the US could offer—in essence the result of a political decision rather than sound and responsible economic analysis.

Fortunately, and through the hard work of negotiators on both sides, we were able to bridge the gap to the point where we could agree on submitting the document for Congressional consideration. While the annual grant figure of \$72 million currently proposed by the US is much closer to the minimum level we initially identified, it still falls \$7 million short of what we have identified as the absolute minimum required for the economy to experience any degree of economic growth during the next twenty years.

Further, it should be recognized that the funding under the amended Compact is subject to many more restrictions than the original Compact. For example, the Department of Interior has stated their understanding that no Compact assistance should be used to fund ongoing operations, except under very limited circumstances, and only with their approval. This leaves it up to the FSM Government to fund its current services through local revenues, whereas under the original Compact the majority of these were funded by the Compact. While the FSM has reached the objective set out in the original Compact of increasing the share of local revenues in the total budget, these are hardly adequate to fund all ongoing operations.

Add to this the effects of the initial reduction in grant funding in 2004, the pressures placed on the economy by raising the necessary \$30 million trust fund contribution, and the reduction in government capacity due to new restrictions on the funds, and one can see that the potential for huge economic instability exists. The

\$7 million in additional annual funding requested by the FSM may not seem like much in the overall scheme of the Compact and the US foreign assistance budget, but it is critical to the health of the FSM's economy, the well-being of our people, and to the future of our nation.

There are several other aspects of the Compact which are troublesome from our point of view. First, there is the inadequacy of the inflation adjustment. This involves two separate issues—the formula to calculate adjustment and the base year for adjustment. The FSM seeks the assistance of the Congress in restoring full inflation adjustment and adjusting the base year to 2002, which is far more reasonable than the proposed date of 2004. This, of course, is closely linked to the issue of the adequacy of grant funding, and it is possible that shortcomings in one area could be met through adjustment of the other.

Similarly, we note that the GAO's testimony before your Committee in 2002 stated that the levels of funding proposed for the FSM's trust fund were not adequate to ensure the viability of the fund. We concur with this finding, and are also concerned about some of the structural and organizational weaknesses of the fund that we highlighted during the course of the negotiations. We hope that these can be sufficiently corrected in the next few years, as provided for in the final Compact text.

Another alarming change in the amended Compact is the loss of FEMA disaster relief assistance. Without reinstatement of this important benefit by the US Congress, the substantial investment made by the US, and pledged for the next twenty years, is placed in jeopardy. As the proposed amendments now stand, storms or other natural disasters—a statistical certainty, hold the potential to derail the economic engine of the nation.

Similar to the FEMA issue, we are very concerned over continuation of federal programs under the amended Compact. Throughout the negotiations, the US has stated that it was not their desire to force the hand of Congress on this important issue. At the same time, Congress has at times (such as in the "No Child Left Behind Act") called upon the negotiators to decide the matter. In many areas this has resulted in essential federal programs extended to the FSM possibly falling through the cracks.

The US negotiator has since clarified the Administration's position on the matter, stating that calculations of the US assistance offer were made based upon the assumption that federal programs would continue at their current levels. We hope that Congress, in its wisdom, will take note of this important statement and act to ensure the continuation of invaluable programs to the FSM, such as those under NCLBA, IDEA, Head Start, Pell Grants, and others.

Mr. Chairman, allow me to turn briefly to elements of the legislation that are not part of the negotiated amendments. We wish the Committee to be aware that the FSM had no part in the drafting of these proposals by the Administration. In fact, we were not consulted on any aspect of the drafting and were assured that any changes from the existing language in PL 99-239 would be solely to update existing language. When we finally had the opportunity to review the draft, which we received well after your hearing, we found that the changes went far beyond a simple "updating." We identified at least three major problems that will require adjustment by the Congress.

First, there is the issue of transition to a machine-readable passport scheme. This is a concept to which the FSM has repeatedly pledged its support. However, we find it quite alarming that the Administration has unilaterally seen fit, at this late hour, to set aside \$250,000 or more from the Compact's capacity-building assistance for this purpose. It is alarming for many reasons—the fact that budgets are in the process of being developed on the negotiated package, the fact that the sector is currently under funded even before these changes, and for the precedent it sets for future US action without consultation.

Second, and similar to the first, is that the US insists on mandating the FSM's development of a more effective immigrant screening system. We are given one year to do this, without specifying how such measures would be funded. Again, the FSM has repeatedly agreed to undertake steps to implement such systems. However, and by all reasonable estimates, it is an extremely expensive undertaking that likely could not be concluded in one year. Under the US proposal, FSM failure to meet this arbitrary deadline would result in withholding of Compact assistance.

Finally, there is the matter of changes to the language concerning provision of compensatory federal programs. In 1986 Congress passed this language during its consideration in order to mandate these programs, and funding, to the FSM as partial compensation for loss of tax and trade benefits that were made by Congress prior to passage. While the tax and trade provisions of the original Compact are largely unchanged, the Administration has seen fit to alter the language of the com-

pensatory provisions so as to make them optional for the US. Clearly, it is not be the Administration's role to redraft agreed Congressional language.

In conclusion, Mr. Chairman, the US and the FSM acting together have drawn upon the lessons of the original Compact in developing a document that will further the mutual interests of both nations. With the help of the US Congress in addressing the few shortcomings in the proposed agreement before you, we can arrive at a document that ensures the continued viability of a nation and her people, and thus maintains the peace and security of this critical region of the world.

Both the US and FSM can be rightly proud of the unique bonds we have forged in the Compact period, and in the innovative roadmap we have constructed for the next 20 years and beyond. We urge Congress to act favorably on the Compact legislation, and to make the corrections necessary to ensure a solid foundation for the future.

I thank you, Mr. Chairman.

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PREPARED STATEMENT OF THE HONORABLE CHRISTOPHER J. LOEAK, SENATOR IN THE NITIJELA REPRESENTING THE ATOLL OF AILINGLAPLAP, AND CHAIRMAN, KWAJALEIN NEGOTIATION COMMISSION (KNC), ON BEHALF OF KWAJALEIN LANDOWNERS, SUBMITTED FOR THE RECORD BY THE HONORABLE ENI F. H. FALEOMAVAEGA, A REPRESENTATIVE IN CONGRESS FROM AMERICAN SAMOA

My name is Christopher J. Loeak, Chairman of the Kwajalein Negotiation Commission. I appreciate the opportunity to present the views of the KNC today.

Besides being Chairman of the KNC, I have been a Senator in the Nitijela representing the Atoll of Ailinglaplap since 1985.

I am also a major landowner on Kwajalein Atoll.

Mr. Chairman, I am honored to present the following statement on behalf of the people of Kwajalein and I would like to express my appreciation and sincere thanks to you and the members of this House International Relations Committee for giving me the opportunity to do so.

#### ABOUT THE KWAJALEIN NEGOTIATION COMMISSION.

I represent the Kwajalein Negotiation Commission (KNC), an organization established in October 2001 by the people of Kwajalein to represent them in the Compact renegotiations. The KNC is an unprecedented alliance of the traditional leaders of Kwajalein whose purpose is to provide an opportunity for the U.S. to enter into a long-term relationship guaranteeing secure and uninterrupted use of Kwajalein. The divisions within the local traditional leadership that marred the entry into the first Compact have been put aside in the interest of this relationship. As you know, compact renegotiation discussions between the U.S. Government and the Government of the Republic of the Marshall Islands (RMI) were finalized in January of this year.

The first Compact was negotiated when RMI was still a territory. Many provisions were accepted by RMI in the interest of achieving self-government as early as possible and sometimes to the detriment of its regional or individual island atoll interests. The Kwajalein people in this context accepted agreements pertaining to Kwajalein, even though the agreements were not completely satisfactory to the people. Indeed, in the plebiscite on the Compact in 1982, the people of Kwajalein overwhelmingly voted to reject adoption of the Compact (the Compact was nonetheless approved by the RMI by a close margin).

The KNC was formed in large part in order to adequately represent the interests of the people in this regard to ensure that any agreement reached would be equitable and in the interests of the people at large.

Part of the Compact agreement reached in January of this year between the RMI and the U.S. Government included a new agreement on the Military Use and Operating Rights Agreement, otherwise known as the MUORA. The KNC opposes the new agreement as presently structured and we are asking Congress to either change the agreement to include additional compensation for landowners or postpone approval of the MUORA until a satisfactory agreement can be reached between all the parties.

#### THE MILITARY USE AND OPERATING RIGHTS AGREEMENT.

The current Military Use and Operating Rights Agreement (MUORA) governing Kwajalein expires in 2016. Some argue that the U.S. already has rights to Kwajalein until 2016 and therefore no new agreement should be negotiated before expiration of that agreement. The people of Kwajalein honor the right of the U.S. to Kwajalein until 2016. However, as other matters in the Compact are brought up for dis-



cussion or modification, it is only fitting that the most important component of that agreement, namely U.S. defense rights in the Marshall Islands, be revisited. We believe this exercise to be of mutual interest and benefit because it can eliminate those aspects of the first Compact that are unfair to the landowners while at the same time guarantee the long term access that the U.S. seeks. A mere extension would perpetuate the existing hardships and inequities and would ignore the lessons learned in the first fifteen years of the Compact.

Any extension of the MUORA beyond 2016 requires the approval of the people of Kwajalein as stipulated by our Constitution. Moreover, any change to the MUORA that would extend the use of Kwajalein by the United States beyond 2016 requires that a new Land Use Agreement ("LUA") be implemented between the RMI and Kwajalein Landowners. Accordingly, the new MUORA agreement cannot be implemented without a new LUA.

The KNC rejects the notion that the execution of a new LUA is exclusively an internal matter between the national government of the RMI and the landowners of Kwajalein. Although we understand that it is the position of the United States that the U.S. negotiates "sovereign to sovereign" and that it must respect the nationally recognized and duly chosen representatives of the people of the RMI, the United States always takes into account the practical considerations that exist in a country when implementing new agreements. For example, in 1982 the U.S. required that the original LUA be implemented before the U.S. Government agreed to the present MUORA in force between our governments.

The point has been made that if the people of Kwajalein have an issue with the MUORA we should take it up with our own government in the RMI and that we do not have standing to petition the Congress for changes to the agreement. This type of thinking is not credible and belies the reality of the process in which we are all now engaged. The RMI in fact is petitioning the Congress for changes to the new Compact in the areas of infrastructure, inflation, FEMA and other areas. In 1982, Congress legislated changes to the negotiated Compact that increased coverage for the RMI on programs related to FEMA, Education, and other items. The issue of increased compensation to Kwajalein is but one in a number of issues to be addressed by the Congress.

The United States and the RMI recognized the importance of securing the participation of the KNC in the negotiations when we were invited to participate in several negotiating sessions between the U.S. and the RMI. However, when the meaningful bargaining began between the parties, the KNC was excluded from negotiations. The reasons for this exclusion are unclear to us. We were left with the proposition of "take it or leave it". Accordingly, we have made it absolutely clear that we will not support execution of a new LUA until such time as the new MUORA reflects a fair and equitable deal for the people of Kwajalein.

#### THE INADEQUACIES OF THE RECENTLY ANNOUNCED MUORA.

##### *The term.*

The KNC opposes the recently announced MUORA proposal because it does not adequately provide for the long-term needs of the people of Kwajalein. When these negotiations started, the KNC proposed a 50-year long-term lease of Kwajalein. We believe that a 50-year commitment on behalf of both of our governments is in our mutual self-interests. However, the new MUORA falls short of this commitment. While the new MUORA purports to be a 50-year extension from 2017 until 2066, with a possible 20-year extension beyond that, in reality the new MUORA is a 7-year extension, since the U.S. can exercise a termination notice in 2016 that could terminate the MUORA by 2023. After 2023, the agreement is essentially a year-to-year lease, since the termination notice right can be exercised in any year after 2016. We would far prefer an option period that would obligate the U.S. to a period of time beyond 2024, like the 15-year option present in the existing MUORA, to a one-year option period that renews itself annually. Accordingly, the KNC, on behalf of the people of Kwajalein, must consider the social and financial implications of a termination of the MUORA at a date as soon as 2023, notwithstanding that the U.S. has falsely described this lease as long-term.

The people of Kwajalein have consistently expressed their commitment to providing the U.S. full access to Kwajalein and they hereby reaffirm this commitment. However, it is also their position that a piecemeal approach is not a satisfactory arrangement to either side. Our proposal for a 50-year lease would give the U.S. advantage of long-term security enabling substantial investments in its missile defense program while the people of Kwajalein will have the advantage of economic security. Short-term options do not provide either and in fact will leave our people

in a state of suspended animation, severely limiting the ability of determining an appropriate development program for Kwajalein.

*The compensation amounts.*

When the KNC joined negotiations with the RMI and the U.S. in the early fall of 2002, the RMI and the KNC proposed a joint package based upon an 8-point comprehensive formula that addressed the totality of programs that affect the use of Kwajalein by the U.S. Included in the proposal were provisions dealing with the MUORA Term, Kwajalein Landowners Compensation, Taxation, a Kwajalein Landowners Trust Fund, Kwajalein Impact funding, Ebeye Special Needs, Early Termination, and the SOFA. These items were linked together and the adequacy of funding for one of the provisions affected the adequacy of funding for the other.

With respect to the Kwajalein Landowner Compensation amount, the Kwajalein Landowners proposed a funding index supported by economic and population indexes that were intended to reflect the inflation indexed value of the compensation amounts in the original MUORA supplemented by population growth. This amount, \$19.1 million in 2004, was economically supported and justified by data.

In the negotiations, one-by-one the United States whittled away at the 8-point proposal and isolated each part of the package so that the negotiations appeared to be progressing towards agreement upon items of the package without respecting the interplay between the provisions themselves. For instance, the proposal to allow the RMI to tax expatriate workers at Kwajalein at the prevailing national rate of taxation (an increase from 5% to 12%) was intended to ameliorate a tax subsidy to the U.S., while at the same time, providing a means of providing a growth-oriented revenue source to the RMI for landowner funding. Notwithstanding this basic right of national sovereignty, the U.S. rejected any increase in taxation amounts, even to the national rate, depriving the RMI government of its most effective means of raising revenue to pay for the welfare of its people. We no of no other example where the United States enjoys such a tax subsidy to the disparity and detriment of another country. And this agreement locks in this subsidy for the entirety of the term of the MUORA!

At the same time, the U.S. offered amounts for landowner compensation that were below inflation adjusted amounts and were offered without economic rational or justification other than that they were above what is presently offered in the present MUORA. In the final offer by the U.S., a \$15 million base was offered beginning in 2004 as landowner compensation. On an inflation basis, this amount represents a degradation of 60% of the value that the landowner's compensation amount achieved in 1979. Accordingly, it was no surprise that the KNC rejected the U.S. offer on Landowner funding as inadequate, particularly since the U.S. would not offer an alternative means of achieving landowner compensation through taxation.

*The lack of a Landowner's Trust Fund.*

A basic tenet of the philosophy of the landowners in formulating their proposal for a long-term lease of Kwajalein was that the term and the amount of funding for landowner's compensation be sufficient to provide for the long-term needs of the people of Kwajalein. The U.S. government states that the new MUORA is a billion-plus deal that will last until 2086. But as I have already described, the agreement is actually a short-term extension until 2023 with the possibility that the U.S. may decide to stay longer. In effect it is an agreement until 2023 with a series of rolling annual 1-year options to terminate if and when the U.S. chooses to leave after 2023.

Under these circumstances, the landowners are concerned that the compensation amounts provided in the new MUORA be sufficient that a corpus of funds be retained that would provide annual income to landowners sufficient to replace the compensation payment if and when the U.S. departs. At the \$19.1 million level (in 2004), the landowners offered to voluntarily contribute 10% of the annual compensation amount into a trust fund for this purpose. This amount was to be matched by a contribution from the RMI through tax receipts.

The present MUORA offer does not meet the objectives of the people of Kwajalein in this regard and must be rejected as insufficient to pay for our long-term needs.

HOW THE NEW MUORA CAN BE IMPROVED TO ACHIEVE OUR SUPPORT

The new MUORA can be substantially improved in a manner that would be sufficient to gain the support of the KNC if the compensation to landowners is improved sufficiently to provide for our long-term needs. This could be achieved in a number of ways. First, the annual payment could be raised to \$19.1 million annually from the \$15 million floor. If this is too difficult for the U.S. to meet because of funding constraints or other budgetary considerations, we have put forward as an option that the Congress provide \$20 million in 2004, to be provided in addition to the \$15

million base payment in 2004, for the purposes of establishing a Landowner's Trust Fund to provide for the long-term welfare of the people of Kwajalein.

Still other formulations of increased funding may be acceptable to the KNC should Congress think of additional ways to provide for our long-term welfare.

ALTERNATIVELY, POSTPONEMENT OF A NEW MUORA AND CONSIDERATION OF A  
TRANSITION TO REPATRIATION AND RE-ADAPTATION.

As we have stated time and again, the people of Kwajalein are committed to long-term access to Kwajalein on the basis of an equitable arrangement between both parties. If the U.S. and the people of Kwajalein cannot reach an acceptable arrangement at this time, however, we would prefer to postpone our discussion related to extension of the lease beyond 2016 to another time. It is far preferable to us to delay our talks to the alternative of having to debate a deal that we consider is unfair and inequitable and which cannot be implemented. Put another way, the present circumstances will breed division and opposition in our country.

If on the other hand the U.S. prefers to close out the Kwajalein Reagan Test Site in 2016, then it should be prepared to discuss now the terms of that closure including resettlement, restoration, re-adaptation, and rehabilitation. Environmental clean up and the planting of crops will take at least 7 years and therefore planning and agreements cannot wait until 2016. It is the preference of the landowners that the U.S. remains in Kwajalein, keeping with our mutual defense agreement. However, should the U.S. plans demand otherwise, then we should all face up to that possibility by carefully and adequately planning for it.

SUMMARY

In conclusion, the leadership and people of Kwajalein wish to reaffirm their full support for the U.S. military activities in Kwajalein atoll and hope to continue their friendship and cooperation with the United States. At the same time, we are hopeful that through changes to the new MUORA we will achieve a fair and just arrangement for the continued use of Kwajalein. We have formulated several alternatives as a basis for changing the new MUORA that can lead to implementation of a new LUA. We thank the Committee for this opportunity and look forward to working with our negotiators to reach an agreement that will gain early approval by both the U.S. and the RMI in accordance with their Constitutional processes.

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THE NUCLEAR CLAIMS TRIBUNAL OF THE REPUBLIC OF THE MARSHALL ISLANDS  
AN INDEPENDENT EXAMINATION AND ASSESSMENT OF ITS DECISION-MAKING PROCESSES

*1. Executive Summary*

In June 2002 the Republic of the Marshall Islands (the "RMI") retained Kirkpatrick & Lockhart LLP to undertake an independent examination and assessment of the processes used by the Marshall Islands Nuclear Claims Tribunal to adjudicate claims that had been filed with the Tribunal seeking compensation for personal injuries and property damage suffered as a consequence of the U.S. nuclear tests that took place in the Marshall Islands during the middle of the twentieth century. This report represents the results of that examination and assessment.

In brief, we have concluded that:

1. The Nuclear claims tribunal has fulfilled the basic functions contemplated by the U.S. Congress and the Marshall Islands legislature, the Nitijela, when the United States and the RMI entered into their Compact of Free Association in 1986 and the Nitijela passed the Nuclear Claims Tribunal Act in 1987.
2. In general, the Members and Officers of the Tribunal appear to have been qualified to perform their respective functions and have had access to the resources they needed to do so.
3. The Tribunal has conducted its business in an orderly manner, following rules and procedures that closely resemble those used by legal systems in the United States.
4. The Tribunal's processes for resolving personal injury claims were modeled after similar processes used in the United States and elsewhere in the world to compensate people who have been adversely affected by nuclear tests and mass torts. Indeed, the compensation standards that the Tribunal used to resolve personal injury claims are similar to those that the U.S. Congress es-

tablished when in enacted the Radiation Exposure Compensation Act (the so-called “Downwinders’ Act”) in 1990.

5. The Tribunal has employed more traditional adversary processes to adjudicate the property damage claims that have been presented to it. These property damage claims have been asserted through class action vehicles similar in format to those used in the United States. The litigation of these class actions has been characterized by the kind of legal briefing, expert reports, and motion practice that would be found in many U.S. court proceedings. Although the dollar amounts of these class action awards in the aggregate seem large, the processes that led to those awards seem fair and reasonable.
6. There is some evidence that the Nitijela occasionally sought to influence the Tribunal’s work, particularly in successfully expanding the range of persons eligible to receive personal injury awards. In the end, however, it appears that any such interference had no more than a modest impact on the total dollar amount of the Tribunal’s awards.
7. Although early Members of the Tribunal may have had a different view, the Tribunal never felt that its ability to render awards should be limited by the initial amount of the trust fund established in 1986 by section 177 of the Compact of Free Association. We understand that both the Tribunal and the claimants before it regarded the initial \$150 million trust fund as an arbitrary figure established through the political process that we never intended to approximate either the total damages suffered by the people of the Marshall Islands as a result of the U.S. nuclear testing program or the compensation to which they should ultimately be entitled. Whether Congress intended otherwise is a political issue upon which we express no opinion. We note, however, that the U.S. Government has already approved compensation claims of more than \$562 million under the Downwinder’s Act by persons injured as a result of nuclear tests in Nevada that were much smaller in number and magnitude than the tests conducted in the Marshall Islands. Based on our examination and analysis of the Tribunal’s processes, and our understanding of the dollar magnitude of the awards that resulted from those processes, it is our judgment that the \$150 million trust fund initially established in 1986 is manifestly inadequate to fairly compensate the inhabitants of the Marshall Islands for the damages they suffered as a result to the dozens of U.S. nuclear tests that took place in their homeland.

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